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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1959~~ 1960

No. ~~598~~ 22

PETER CHAUNT, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 16, 1959
CERTIORARI GRANTED FEBRUARY 29, 1960

SUPREME COURT OF THE UNITED STATES

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filed a Petition for Naturalization in the United States District Court for the Eastern District of New York.

[fol. 3]

IV

That on or about November 28, 1940, the aforesaid petition was granted, and on said date Certificate of Naturalization No. 4785200 was issued to the said defendant.

V

That in the proceedings that led to his naturalization and in the course of his preliminary naturalization examination conducted by an officer of the Immigration and Naturalization Service, the said defendant, Peter Chaunt, alleged under oath that he had never belonged to any Communist, Nazi or Fascist organization, and that the only organization to which he had ever belonged was the fraternal benefit society of International Workers Order; that he fully believed in the form of government of the United States; and that he did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country; that he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that it was his intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of which he was a subject or citizen; that he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that he would bear true faith and allegiance to the same; and that he took this obligation freely and without any mental reservation or purpose of evasion.

VI

That the allegations of the said defendant, Peter Chaunt, as set forth in paragraph V above were false and untrue, as more particularly herein appears below.

VII

Plaintiff alleges that in truth and in fact the said Peter Chaunt has been an active member and officer of the Communist Party of the United States, including the Workers (Communist) Party and other organizations affiliated with or controlled by the Communist Party of the United States since at least 1926.

[fol. 4]

VIII

That the Communist Party of the United States is an organization which at all times since 1926, as the said Peter Chaunt well knew, advised, advocated, or taught the overthrow by force or violence of the government of the United States; advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character; advised, advocated, or taught the unlawful damage, injury or destruction of property; advised, advocated, or taught sabotage; wrote, circulated, distributed, printed published, or displayed, or caused to be written, circulated, distributed, printed published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described hereinabove in this paragraph; promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

IX

That at all of the times above mentioned, as the said Peter Chaunt well knew, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties.

including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

X

That by reason of the foregoing, the said Peter Chaunt at the time he applied for and obtained naturalization was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet [fol. 5] Socialist Republics.

XI

That the said defendant intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to his naturalization, concerning his affiliation with the Communist Party of the United States and its affiliated organizations, as set forth in the preceding paragraphs, in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning his qualifications for citizenship; and to procure naturalization in violation of law.

XII

That the defendant, Peter Chaunt, in the proceedings leading to his naturalization, in his allegations in his Preliminary Form for Petition for Naturalization, and in the oral examination of the defendant conducted by an officer of the Immigration and Naturalization Service, on or about June 27, 1940, alleged under oath that he had never been arrested or charged with violation of any law of the United States, or State, or any City Ordinance or traffic regulation.

XIII

That the allegations of said defendant, Peter Chaunt, as set forth in paragraph XII were false and untrue, in that in truth and in fact the said defendant had been arrested in New Haven, Connecticut, by the New Haven Police Department, on July 30, 1929, December 21, 1929 and March 11, 1930, on charges of violation of City Ordinance No. 729 (distributing handbills), violation of park rules and general breach of peace, respectively.

XIV

That whether or not the defendant had ever been arrested or charged with the violation of any law of the United States, or State, or any City Ordinance or traffic regulation was material to the determination of defendant's qualification for citizenship with regard to whether or not said defendant was a person of good moral character; that defendant concealed the facts of his previous [fol. 6] arrests in order to conceal from the Naturalization Examiner and from the Court the facts which proved him to be a person of poor moral character, and did wilfully misrepresent that he had not been arrested or charged with the violation of any law, to induce the Naturalization Examiner to make an unconditional recommendation to the Court that his Petition for Naturalization be granted and to procure naturalization by concealment of material facts and by wilful misrepresentation, in violation of law.

XV

That the defendant was not a person of good moral character during the period required by law, inasmuch as he had made false statements in the proceedings leading up to his naturalization as hereinbefore above enumerated.

XVI

That before the filing of this Complaint, an affidavit was executed by Maurice A. Roberts, an attorney of the Immigration and Naturalization Service, United States Department of Justice, showing good and sufficient cause for the

institution of this proceeding under, and as required by, the provisions of Section 340 (a) of the Immigration and Nationality Act of 1952 (8 U.S.C.A., Section 1451 (a)), to set aside and cancel the naturalization of said defendant, Peter Chaunt, as having been procured by concealment of material facts and by wilful misrepresentation, which affidavit is attached hereto, marked Exhibit "A" and made a part hereof, the same as though set forth at length herein.

Wherefore, plaintiff prays that the Order admitting said defendant to citizenship be revoked and set aside and that the Certificate of Naturalization issued to the defendant be cancelled, and that such revocation and setting aside of the Order admitting said defendant to citizenship and said Certificate of Naturalization be effective as of the original date of the Order and Certificate, respectively; that the defendant be required to surrender said Certificate of Naturalization and that he be forever restrained and enjoined from setting up, claiming, or exercising any rights, privileges, benefits or advantages whatsoever under said Certificate of Naturalization; and that plaintiff have such other and further relief as the circumstances of the [fol. 7] case may require, and as in equity and good conscience may seem meet.

Laughlin E. Waters, United States Attorney, Clyde C. Downing, Assistant U. S. Attorney, Chief, Civil Division, Robert K. Grean, Assistant U. S. Attorney, Attorneys for Plaintiff.

[fol. 8]

EXHIBIT "A" TO COMPLAINT

UNITED STATES OF AMERICA	)	
	)	
	) SS:	C-4785200
	)	
DISTRICT OF COLUMBIA	)	

Maurice A. Roberts, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and

as such has access to the official records of the said Service, from which the following facts appear:

(a) That PETER CHAUNT filed a petition for naturalization in the United States District Court for the Eastern District of New York on June 27, 1940 and was admitted to citizenship by that court on November 28, 1940, receiving naturalization certificate No. 4785200.

(b) That in the proceedings which led to his naturalization, the said PETER CHAUNT alleged under oath:

(I) That he had never belonged to any Communist, Nazi or Fascist organization and that the only organization to which he had ever belonged was the fraternal benefit society of International Workers Order.

(II) That he fully believed in the form of government of the United States; and that he did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that it was his intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of which he was a subject or citizen.

(IV) That he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that he would bear true faith and allegiance to the same; and that he took this obligation freely without any mental reservation or purpose of evasion.

(c) That the allegations of said PETER CHAUNT as set forth in subparagraph 1(b) were false and untrue.

(d) That the said PETER CHAUNT has been an active member and officer of the Communist Party of the United States, including the Workers (Communist) Party and other organizations affiliated with or controlled by the Communist Party of the United States since at least 1926.

[fol. 9] (e) That the Communist Party of the United States is an organization which at all times since 1926, as the said PETER CHAUNT well knew;

(I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

(II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(III) Advised, advocated, or taught the unlawful damage, injury or destruction of property;

(IV) Advised, advocated, or taught sabotage;

(V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 1(e), I, II, III, and IV.

(VI) Promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

(f) That at all of the times above mentioned, as the said PETER CHAUNT well knew, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow,

in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That by reason for the foregoing, the said PETER CHAUNT at the time he applied for and obtained naturalization: was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet Socialist Republics.

[fol. 10] (h) That the said PETER CHAUNT intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to his naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning his qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340(a) of the Immigration and Nationality Act, 8 U.S.C. 1451(a), to set aside and cancel the naturalization of said PETER CHAUNT as having been procured by concealment of material facts and by wilful misrepresentation.

3. That the last known place of residence of the said PETER CHAUNT is 3305 West 34th Street, Cleveland, Ohio.

/s/ MAURICE A. ROBERTS
Attorney

Subscribed and sworn to at Washington in the District of Columbia this 6th day of May, 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d.1 of Title 8 of the Code of Federal Regulations to administer oaths.

/s/ ALBERT E. REITHEL
Assistant General Counsel

[fol. 11] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 15907-WM

[Title omitted]

MOTION TO DISMISS COMPLAINT TO SET ASIDE AND CANCEL NATURALIZATION—Filed January 4, 1954

The defendant, Peter Chaunt, hereby moves that the complaint be dismissed upon the following grounds:

I

The complaint fails to state a claim against the defendant upon which the relief sought can be granted.

II

The decree and judgment of naturalization referred to in Paragraphs III and IV of the complaint is res judicata and conclusive of all matters and issues determined or determinable in the naturalization proceeding including all such issues pleaded in the complaint.

III

The Court is without jurisdiction of the action in that Section 340 of the Immigration and Nationality Act of 1952

(8 U.S.C.A. 1451) under which the complaint is drawn [fol. 12] (hereinafter referred to as the "statute") is unconstitutional and void both upon its face and as applied to the defendant in the following respects:

(A) That in providing for cancellation of a decree and judgment of naturalization a court of competent jurisdiction, after proceedings to which the United States was a party and from which no appeal was taken, the statute violates the separation of powers prescribed by the Constitution and denies defendant due process of law contrary to the guarantees of the Fifth Amendment thereto.

(B) That in authorizing cancellation of such a decree upon grounds not prescribed at the time of naturalization, the statute is an *ex post facto* law repugnant to Article I, Section 9, Chapter 3 of the Constitution of the United States.

(C) That as applied to the defendant under the circumstances alleged in the complaint the statute is an *ex post facto* law and a bill of attainder in violation of Article I, Section 9 of the Constitution.

(D) That the statute on its face is vague, ambiguous and uncertain, and fails to provide any clearly ascertainable standard of disclosure for the guidance of petitioners in naturalization proceedings, in violation of the due process clause of the Constitution.

(E) That in providing for deprivation of citizenship without the right of trial by jury the statute denies the defendant due process of law in violation of the Fifth Amendment to the Constitution.

(F) That the statute abridges liberty of speech, assembly and association, and activities in furtherance thereof, in violation of the First Amendment to the Constitution.

[fol. 13] IV

The Court is without jurisdiction in that one of the causes of action sought to be alleged in the complaint

is not supported by an affidavit of good cause as required by section 340(a) of the said Act.

V

Two causes of action are improperly joined in the complaint, and said causes of action are not separately stated.

Said motion is based upon the attached memorandum of points and authorities and all the other records and files herein.

Margolis, McTernan and Branton, By John W. Porter, Attorneys for Defendant.

[fol. 14] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 15907-WM

[Title omitted]

MOTION TO STRIKE PORTIONS OF COMPLAINT —Filed January 4, 1954

The defendant Peter Chaunt hereby moves to strike from the complaint the following portions thereof upon the ground that they are, and each of them is, redundant, immaterial and impertinent:

(1) The following language appearing in paragraph VII, page 2, lines 30 and 31: "...including the Workers (Communist) Party and other organizations affiliated with or controlled by the Communist Party of the United States since at least 1926."

(2) The following language appearing in paragraph VIII, page 3, lines 14 to 16: "...promoted, influenced, and advocated the political activities, pub-

lic relations, and public policy of the Union of Soviet Socialist Republics."

(3) All of paragraph IX, or in the alternative lines 22 to 25, inclusive, page 3: " . . . that decisions made by such organization were binding upon other Communist Parties."

[fol. 15] (4) All of paragraph X.

(5) All of paragraph XI.

(6) All of paragraph XIII.

(7) All of paragraph XIV.

(8) All of paragraph XV.

(9) Those portions of Exhibit "A" to the complaint corresponding to the portions of the complaint referred to in paragraphs (1) to (8) of this motion set forth above.

Said motion is based upon the attached Memorandum of Points and Authorities, and all the other records and files herein.

Margolis, McTernan and Branton, By John W. Porter, Attorneys for Defendant.

[fol. 16] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 15907-WM

[Title omitted]

RULING ON MOTIONS—January 11, 1954,
Filed January 21, 1954

The above entitled case having come on for hearing on defendant's Motion to Dismiss Complaint, Motion for More

Definite Statement, and Motion to Strike Portions of Complaint, on January 11, 1954, in the above entitled Court, before the Hon. William C. Mathes, Judge Presiding, the defendant being represented by his attorneys, Margolis, McTernan and Branton by John W. Porter, and the plaintiff being represented by its attorneys, Laughlin E. Waters, United States Attorney, and Max F. Deutz and Robert K. Grean, Assistants United States Attorney by Robert K. Grean; and the Court having received and considered the Memorandum of Points and Authorities in Support of said Motions and the Memorandum in Opposition to said Motions, and the Court having heard oral argument of counsel, and being fully advised in the premises;

It Is Hereby Ordered, Adjudged and Decreed that the defendant's Motion to Dismiss Complaint, Motion for More Definite Statement, and Motion to Strike Portions of the Complaint be, and each of them is, hereby denied; and

It Is Further Ordered that the defendant shall have twenty days in which to answer plaintiff's Complaint on file herein.

[fol. 17] Done in Open Court January 11, 1954.

Wm. C. Mathes, Judge, United States District Court.

Approved as to form pursuant to Local Rule 7(a) this 18 day of January, 1954.

Margolis, McTernan and Branton, By John W. Porter Attorneys for Defendant

[fol. 18] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

Civil 15907-WM

UNITED STATES OF AMERICA, Plaintiff,

v.

PETER CHAUNT, also known as Ladislans Leitner, also known as Leslie Bela Leitner, Defendant.

SECOND AMENDED COMPLAINT TO SET ASIDE AND CANCEL NATURALIZATION—Filed April 21, 1955

Plaintiff, United States of America, complains of defendant and for causes of action alleges that:

FIRST CAUSE OF ACTION

(Concealment of Material Facts)

I

The plaintiff is a corporate sovereign, and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 (Public Law No. 414; 82nd Congress), [8 U.S.C.A., Section 1451(a)].

II

The last known residence of the defendant is 310 Mt. Washington Drive, Los Angeles, California, within the Southern District of California, Central Division, and within the jurisdiction of this Court.

[fol. 19]

III

On or about June 27, 1940, the defendant, Peter Chaunt, also known as Ladislans Leitner, and also known as Leslie Bela Leitner, who was then an alien and a native of Hungary, filed a Petition for Naturalization in the United States District Court for the Eastern District of New York.

IV

On or about November 28, 1940, the aforesaid petition was granted by said Court, and on said date Certificate of Naturalization No. 4785200 was issued to the defendant.

V

The Order admitting defendant to citizenship, and said Certificate of Naturalization, issued as aforesaid, were procured by the defendant from said Court by intentional concealment of material facts, in that defendant, in the proceedings which led to his naturalization, intentionally concealed the following material facts: (1) That prior to and at the time of filing said Petition for naturalization and at the time of his naturalization, defendant was an active member and officer of the Communist Party of the United States and had been since on or about the year 1926; (2) that prior to said naturalization the defendant had been arrested and charged with violation of the city ordinances of the City of New Haven, Connecticut, as follows: (a) On or about July 30, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729 Disposition "Plea—not guilty—Discharged"; (b) On or about December 21, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harangue, or other public demonstration in New Haven Green [fol. 20] outside of the churches. Pages 609 Charter and

Ordinances" Disposition, "Demurrer filed 12-27-29. Demurrer overuled—Whitaker 12-27-28, plea—not guilty, Found J.S."; (d) On or about April 7, 1930, defendant was arrested and charged in the Criminal Court of Common Pleas, New Haven, Connecticut, as follows: "Edwin S. Pickett, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, now here in Court, information makes that at the town of New Haven, within the County of New Haven, on the 11th day of March, 1930, Peter Chaunt of New Haven, with force and arms, did then and there disturb and break the peace by tumultuous and offensive carriage, noise and behavior, against the peace, of evil example, and contrary to the statute in such case made and provided; whereupon the attorney prays the advice of this Honorable Court in the premises"; that defendant pleaded not guilty on April 7, 1930, and disposition was "nolled" April 7, 1930"; (c) That on the 11th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he "did commit, violate, Peter Chaunt, general breach of peace"; "plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed"; (3) that during the five years immediately preceding the date of defendant's petition for naturalization defendant was not and did not behave as a person of good moral character by reason among other facts of the facts as herein alleged and the concealment thereof, as herein alleged, in violation of the fourth subdivision of Section 4 of said Naturalization Act of 1906, as amended.

VI

The facts so concealed, as alleged in paragraph V hereof, are material for the reason that they violate the requirements for naturalization as provided by the Nationality Act of 1906, as amended, and for the further reason that as a result of said concealment, the Immigration and Naturalization Service and the Court did not make a further investigation as to the nature and principles of the Com-[fol. 21] munist Party of which defendant was a member, and did not make a full and proper investigation as to

whether or not defendant subscribed to the principles of the Communist Party or whether defendant was or had behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, or whether or not defendant could in open court take oath of allegiance to the United States without any mental reservation or purpose of evasion, as required by Section 4, subdivisions 3, of the Nationality Act of 1906, as amended, and by Rule 8(c) of the Rules and Regulations of the Immigration and Naturalization Service, and, as a result of said concealment, said Immigration and Naturalization Service did not make a full and proper investigation as to whether defendant had all of the qualifications for citizenship required by the Nationality Act of 1906, as amended, and, as a result thereof, said Immigration and Naturalization Service made a recommendation to the Court that said Petition for Naturalization be granted, and said Court granted said Petition for Naturalization.

VII

Before the filing of this Amended Complaint, an affidavit was executed by Maurice A. Roberts, an attorney of the Immigration and Naturalization Service, United States Department of Justice, showing good and sufficient cause for the institution of this proceeding under, and as required by, the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 (8 U.S.C.A., Section 1451(a), to set aside and cancel the naturalization of said defendant, Peter Chaunt, as having been procured by concealment of material facts and by willful misrepresentation, which affidavit is attached hereto, marked Exhibit "A" and made a part hereof, the same as though set forth at length herein.

[fol. 22] SECOND CAUSE OF ACTION

(Willful Misrepresentation)

I

Plaintiff repeats and realleges as a part of this cause of action each and all of the allegations contained in

paragraphs I, II, III, IV and VII of the First Cause of Action, and makes them a part hereof as though set forth at this point.

II

Said order admitting defendant to citizenship and said Certificate of Naturalization were procured by defendant by willful misrepresentation in that defendant in the proceedings which lead to his naturalization (1) intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order", and no others, and in answer to an oral question propounded by Reuben E. Wilson, Naturalization Examiner, as follows: "Have you ever belonged to any Communist, Nazi or Fascist organization", defendant intentionally and falsely answered "No", whereas, in truth and in fact, the defendant, from on or about the year 1926, had been an active member and officer of the Communist Party of the United States; (2) intentionally and falsely represented that during the five years immediately preceding the date of his Petition for Naturalization defendant was, and behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, and intentionally and falsely represented that it was the defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and that it was his intention to bear true faith and allegiance to the United States of America and to support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic, whereas, in truth and in fact, by reason of defendant's membership in, [fol. 23] and his knowledge of the nature and principles of the Communist Party, the defendant was not and had not behaved as a person attached to the principles of the Constitution of the United States or well disposed to the good order and happiness of the United States, and it was not defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and it was not his inten-

tion to bear true faith and allegiance to the United States of America or to support or defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; (3) intentionally and falsely represented that prior to said naturalization he had never been arrested or charged with violation of any law of the United States or state or any city ordinance or traffic regulation, whereas in truth and in fact defendant had been arrested and charged with violation of the city ordinances of the City of New Haven, Connecticut, as follows: (a) On or about July 30, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729, Disposition, "Plea—not guilty—Discharged"; (b) On or about December 21, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, temporarily of said city and town did make an oration, harange, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances" Disposition, "Demurrer filed 2-27-29. Demurrer overruled—Whitaker 12-27-28, plea—not guilty, Found, J.S." (c) On or about April 7, 1930, defendant was arrested and charged in the Criminal Court of Common Pleas, New Haven, Connecticut, as follows: "Edwin S. Pickett, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, now here in Court, information makes that at the town of New Haven, within [fol. 24] the County of New Haven, on the 11th day of March, 1930, Peter Chaunt of New Haven, with force and arms, did then and there disturb and break the peace by tumultuous and offensive carriage, noise and behavior, against the peace, of evil example, and contrary to the statute in such case made and provided; whereupon the attorney prays the advice of this Honorable Court in the premises"; that defendant pleaded not guilty on April 7, 1930, and disposition was 'nolled' April 7, 1930"; (d) That on the 11th day of March, 1930, defendant was ar-

rested and charged at said city and town of New Haven that he "did commit, violate, Peter Chaunt, general breach of the peace"; "plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed"; (4) Intentionally and falsely represented that during the five years immediately preceding the date of defendant's Petition for Naturalization he was and had behaved as a person of good moral character, whereas, in truth and in fact, among other things, by reason of the intentional and false misrepresentations as herein alleged, defendant was not and had not behaved as a person of good moral character during said period.

III

That the Communist Party of the United States is an organization which at all times since 1926, as the said Peter Chaunt well knew, advised, advocated, and taught the overthrow by force and violence of the government of the United States; advised, advocated, and taught the duty, necessity, and propriety of the unlawful assaulting and killing of any officer or officers of the government of the United States because of his or their official character; advised, advocated, and taught the unlawful damage, injury and destruction of property; advised, advocated, and taught sabotage; wrote, circulated, distributed, printed, [fol. 25] published, and displayed, or caused to be written, circulated, distributed, printed, published, and displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, and display, written and printed matter which advised, advocated, and taught the performance of the acts described hereinabove in this paragraph; promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

IV

That at all of the times above mentioned, as the said Peter Chaunt well knew, the Communist Party of the United States was a section of an international organi-

zation called "The Communist International" and that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

V

As a result of the intentional and willful misrepresentations by the defendant, as alleged in paragraph II hereof, the Immigration and Naturalization Service and the Court did not make a further investigation and did not make a full and proper investigation as to whether defendant had all of the qualifications for citizenship required by the Nationality Act of 1906, as amended, and as a result thereof said Immigration and Naturalization Service made a recommendation to the Court that said Petition for Naturalization be granted, and said Court granted said Petition for Naturalization.

WHEREFORE, plaintiff prays that:

1. The order of the United States District Court for the Eastern District of New York, dated on or about November 28, 1940, admitting defendant to citizenship, be revoked and set aside;

2. All official documents evidencing citizenship issued to defendant by virtue of the aforesaid Order, and particularly the original Certificate of Naturalization No. [fol. 26] 4785200 and duplicate Certificate of Naturalization No. 4785200 be cancelled and declared null and void;

3. Defendant be forever restrained and enjoined from setting up and claiming any rights, privileges, or advantages whatsoever under said order or any official document evidencing citizenship by virtue of the aforesaid order;

4. Upon entry of final decree in this case, as heretofore prayed, that same be entered and spread upon the records of this Court, and that said defendant be required to forthwith surrender and deliver his said Certificate of Naturalization to the Clerk of this Court for Cancellation, and

that the Clerk of this Court be further directed to transmit a certified copy of said final decree herein, cancelling such Certificate and setting aside said Order admitting defendant to citizenship, to the Attorney General of the United States, and to the Clerk of the United States District Court in and for the Eastern District of New York, with the directions that the same be entered upon the record in that Court, and that the original Certificate of Naturalization upon the records of Court in the Eastern District of New York be cancelled; and

5. Plaintiff have such other relief as to this Honorable Court may deem proper in the premises.

Laughlin E. Waters, United States Attorney, Max F. Deutz, Assistant U. S. Attorney, Chief, Civil Division, Arline Martin, Assistant U.S. Attorney, Attorneys for Plaintiff.

[fol. 27]

EXHIBIT "A" TO SECOND AMENDED COMPLAINT, ETC.

COPY hh

UNITED STATES OF AMERICA)
) ss C-4785200
DISTRICT OF COLUMBIA)

Maurice A. Roberts, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That PETER CHAUNT filed a petition for naturalization in the United States District Court for the Eastern District of New York on June 27, 1940 and was admitted to citizenship by that court on November 28, 1940, receiving naturalization certificate No. 4785200.

(b) That in the proceedings which led to his naturalization, the said PETER CHAUNT alleged under oath:

(I) That he had never belonged to any Communist, Nazi or Fascist organization and that the only organization to which he had ever belonged was the fraternal benefit society of International Workers Order.

(II) That he fully believed in the form of government of the United States; and that he did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that it was his intention to renounce absolutely and forever all allegiances and fidelity [fol. 28] to any foreign prince, potentate, state, or sovereignty of which he was a subject or citizen.

(IV) That he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that he would bear true faith and allegiance to the same; and that he took this obligation freely without any mental reservation or purpose of evasion.

(c) That the allegations of said PETER CHAUNT as set forth in subparagraph 1(b) were false and untrue.

(d) That the said PETER CHAUNT has been an active member and officer of the Communist Party of the United States, including the Workers (Communist) Party and other organizations affiliated with or controlled by the Communist Party of the United States since at least 1926.

(e) That the Communist Party of the United States is an organization which at all times since 1926, as the said PETER CHAUNT well knew:

(I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

(II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(III) Advised, advocated, or taught the unlawful damage, injury or destruction of property;

[fol. 29] (IV) advised, advocated, or taught sabotage;

(V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 1(e), I, II, III and IV.

(VI) Promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialistic Republics.

(f) That at all of the times above mentioned, as the said PETER CHAUNT well knew, the Communist Party of the United States was a section of the international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That by reason of the foregoing, the said PETER CHAUNT at the time he applied for and obtained naturalization; was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the

[fol. 30] United States against all enemies, foreign and domestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet Socialist Republics.

(h) That the said PETER CHAUNT intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to his naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning his qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340(a) of the Immigration and Nationality Act, 8 U.S.C. 1451(a), to set aside and cancel the naturalization of said PETER CHAUNT as having been procured by concealment of material facts and by wilful misrepresentation.

3. That the last known place of residence of the said PETER CHAUNT is 3305 West 34th Street, Cleveland, Ohio.

MAURICE A. ROBERTS
Attorney

Subscribed and sworn to at Washington in the District of Columbia this 6th day of May, 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d.1 of Title 8 of the Code of Federal Regulations to administer oaths.

ALBERT E. REITHEL
Assistant General Counsel

Affidavit of Service by Mail (omitted in printing).

[fol. 30a] [File endorsement omitted]
[fol. 31]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

Honorable William C. Mathes, Judge Presiding

No. 15907-WM

UNITED STATES OF AMERICA, Plaintiff,

v.

PETER CHAUNT, Defendant.

Reporter's Transcript of Proceedings—
Filed December 22, 1958

Los Angeles, California
Tuesday, March 5, 1957

APPEARANCES:

For the Plaintiff:

Laughlin E. Waters, United States Attorney, Los Angeles 12, California; by Arline Martin, Assistant United States Attorney; and James Dooley, Assistant United States Attorney.

[fol. 32] For the Defendant:

Margolis, McTernan & Branton, 112 West Ninth Street, Los Angeles 15, California; by John W. Porter, Esq.

[fol. 33] CALVIN DERRENGER called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

* * * * * * * *

[fol. 34] Direct examination.

By Miss Martin:

Q. Will you state your name and your present address?

A. Calvin W. Derrenger, address—in this city, my address—

Q. No, your home address.

A. 2931 South Grant, Arlington, Virginia.

Q. Where are you presently employed?

A. In the Department of Justice in the office of the Deputy Attorney General.

Q. Have you ever been employed in the Immigration and Naturalization Service as a preliminary examiner?

A. I have.

Q. Were you so employed in the year 1940?

A. I was.

• • • • • • •

[fol. 35] Q. With regard to this "AC," did you have an established procedure to ask any specific questions when you were determining the attachment of the petitioner to the Constitution?

A. Yes, I did.

Q. What specific questions did you ask?

[fol. 36] A. On the preliminary form there were a number of questions on that point, and in addition to that I would ask the petitioner whether he believed in Nazism, Communism or Fascism.

Q. And if he said that he did believe in Nazism, Fascism or Communism, what notation would you have made on Exhibit 2-G?

A. I would have indicated that he was not attached to the Constitution.

Mr. Porter: I move to strike the answer as not responsive to the question, which was, what notation would he have made.

The Witness: I would have put a "NAC."

By Miss Martin:

Q. What would NAC mean?

A. Not attached to the Constitution.

The Court: When you say you would have done these things, you would have said these things, do you mean that that was the custom and practice, that that was the ordinary course of business at that time to do those things in connection with the examination of a petitioner for naturalization?

The Witness: Yes, sir. These were statutory requirements and we would indicate whether they were met or not, and this is the manner of doing it.

[fol. 37] By Miss Martin:

Q. When you say "these were statutory requirements," what are you referring to by the word "these"?

A. The answers or the questions that I would ask a petitioner, that is, for instance, it is a requirement if they are able to that they speak English, and if they are able to that they read English, and things like that.

Q. It is a requirement that they be attached to the Constitution?

A. Yes, ma'am.

Q. And these notations that you have made here relate to those particular requirements?

A. They do.

Q. And you had an established practice to ordinarily ask them with regard to those requirements?

A. Yes.

Q. Whether or not it had been previously covered in any written application which the petitioner may have filled out?

A. Yes.

Q. Now, referring to the initials "NCR" on Exhibit 2-G, what do they mean?

A. They mean that I asked the petitioner if he had any record of arrests anywhere and his answer was that he had none, and the "NCR" stands for no criminal record anywhere.

* * * * * * *

[fol. 38] The Court: Just to cover this question of organization, what does the entry that you made there with respect to that mean?

The Witness: It means that in this particular case that the petitioner belonged to one organization and he said "No others." And that's—

The Court: The petitioner told you he belonged to the Fraternal Benefit Society of the International Workers Order where he was employed, and to no other organizations?

The Witness: Yes, sir.

By Miss Martin:

Q. Now, did you ask him any other questions with regard to organizations? Was it the practice and custom to ask him any other questions?

[fol. 39] A. The practice and custom was to make sure that all organizations to which the petitioner belonged were noted and with respect to organizations that would be all I would ask.

The Court: You would ask him what organizations he belonged to, and whatever answer he gave you would note on the form, Exhibit 2-G, is that it? Was that the practice?

The Witness: That was the practice, yes, sir.

By Miss Martin:

Q. And if he said he belonged to no others, you made that notation, also?

A. That was to make clear that he had answered the questions fully with respect to the organizations he belonged to.

Q. Now, if in answer to that question the petitioner had answered that he belonged to the Communist Party, what notation, if any, would you have made?

Mr. Porter: May I have that question read? I didn't hear the first part.

The Court: Please read it, Mr. Reporter.

(Question read.)

Mr. Porter: Well, I object to the question on the ground that it is hypothetical, contrary to any fact which has been elicited here.

The Court: It is in the form given. I take it what you mean is that in instances where such an answer was given [fol. 40] what was the ordinary course of business at that time, what was the custom and practice.

The Witness: The custom and practice would be just to list it among the other organizations he may have belonged to.

The Court: Just list the name?

The Witness: That's right.

* * * * * * *

[fol. 41] Q. Now, the red circle around answers to certain questions, for instance we have here Question No. 30, "Have you ever been arrested or charged with violation of any law of the United States or state or any city ordinance or traffic regulation," there is typed in in blue ink after the answer "No" in a blue typewriter, and you have circled that with a red pen and initialed it, "CD, 6-27-1940."

Now, what was your custom and practice with regard to that question?

A. The custom and practice with regard to the questioning of applicants concerning arrests was that they were to go into it very thoroughly to make sure that they gave [fol. 42] a complete answer and to indicate that we would generally circle the answer that was given, initial it and date it.

Q. When you say "to indicate that," what do you mean by that? To indicate what?

A. To indicate that the question was asked and the petitioner answered and that was the answer he gave.

Q. Now, at the time this form was presented to you were the typewritten answers already on the form?

A. They were.

Q. Then you re-asked the questions orally after putting the petitioner under oath?

A. I did.

Q. So that when he circled this answer, his oral answer to your question, "Have you ever been arrested or charged

with violation of any law of the United States or state or any city ordinance or traffic regulation," it was "No," is that correct?

Mr. Porter: Just a moment, please.

I think counsel inadvertently misspoke herself, because the question is when "he" circled the answer so as to indicate the petitioner. I think the intent was to say when "you" circled it.

Miss Martin: Pardon me.

Q. When you circled the answer to Question 30 regarding the arrests, what did that mean?

A. That means that I asked that question and that is [fol. 43] the answer that was given to me.

The Court: The answer appearing within the circle?

The Witness: Yes, sir.

By Miss Martin:

Q. So that the petitioner's answer to your oral question was "No"?

A. That is true.

* * * * * * *

[fol. 44] Q. Now, if at the time you made your preliminary examination of this petitioner—what was the custom and practice if the petitioner answered yes with regard to the question, "Have you ever been arrested"?

A. Well, I would note whatever record he might furnish me, and the petitioner would then go ahead with the filing of his petition with that record there. It would later be verified and checked, and the Designated Examiner would make his recommendation on the basis of what the record showed, and the court, of course, would do the same on that. But the facts would be known to both the Designated Examiner and the court.

Q. Now, you say that if any arrests were disclosed that it was the custom and practice at that time to verify them. Will you tell us what the procedure was?

A. Well, the office procedure, when the petition had been filed they would, if there were any items that required

further investigation, it would go to the investigative unit and they would take it up from there.

Q. Well, now, if the—

The Court: Wait a minute. "Take it up from there"?

The Witness: They would make such investigation—that is, if the petitioner said he arrested at a certain time and place, they would check with the authorities there [fol. 45] to ascertain what the results of that—whether the full facts were stated.

* * * * * * *

[fol. 46] KENNETH J. KALKE called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

* * * * * * * *

[fol. 47] Direct examination.

By Mr. Dooley:

* * * * * * *

Q. Were you ever a member of the Young Communists League?

A. Yes, sir.

Q. When and where did you join the Young Communists League?

A. I joined in Buffalo, New York in 1929.

Q. How long did you remain a member of the Young Communists League?

A. The latter part of the year 1931.

Q. Are you now a member of the Young Communists League?

A. No, sir.

Q. Do you know the defendant Peter Chaunt in this case?

A. Yes, I do.

* * * * * * *

[fol. 48] By Mr. Dooley:

Q. Now, what, if anything, took place in the office of the Unemployed Council at the time that you first met Mr. Chaunt?

A. We assembled ourselves around the table and the man that was standing there, he announced that his—he said, "I am Comrade Chaunt. I am the new district organizer of the Communist Party."

* * * * * * *

[fol. 49] By Mr. Dooley:

Q. Now, after this particular conversation did you hear Mr. Chaunt speak on any other particular occasion that you can recall?

A. Yes, sir.

The Court: When next?

The Witness: This was in March of 1931.

The Court: Where?

The Witness: In Rochester, New York.

The Court: Who was present?

The Witness: It was a district convention of the Young Communist League.

The Court: What did you hear him say?

The Witness: He was the principal speaker at this convention and I can't quote his exact words.

The Court: Tell us the substance, if you can, of what he said.

The Witness: He spoke to us as the Young Communist League, pointing out the important part we played in the working class struggle because we were the recruiting field of young workers, and we trained them, and subsequently they progressed and then became part of the Communist Party.

Also in this speech he told us that as members of the [fol. 50] Young Communist League it was our duty to fight for the interest of the Soviet Union because all the capitalist countries were intent on destroying the Soviet Union because it was the only country at that time that had a true government of workers, a true socialism.

That, in substance, was the basic part of the speech, your Honor.

By Mr. Dooley:

Q. Was Mr. Chaunt introduced at the convention as a speaker?

A. Yes, sir, he was.

Q. How was Mr. Chaunt introduced at this convention?

Mr. Porter: I object to the question as calling for hearsay.

The Court: Do you mean by that what did he hear the person who introduced him say?

Mr. Dooley: Yes, your Honor. I believe it was in the presence of Mr. Chaunt and thus would be admissible.

The Court: Lay the foundation.

Was Mr. Chaunt present when he was introduced?

The Witness: Yes, he was.

The Court: Do you know who introduced him?

The Witness: Yes, sir.

The Court: Who?

The Witness: Ethel Stevens, the district organizer of [fol. 51] the Young Communist League.

The Court: What did you hear Ethel Stevens say in introducing the defendant, if you can recall?

The Witness: I can't quote the exact words.

The Court: The substance of it.

The Witness: In substance, that our next speaker will be Comrade Chaunt, the district organizer of District No. 4 of the Communist Party.

* * * * * * * *

[fol. 52] By Mr. Dooley:

Q. Mr. Kalke, do you know the area covered by the Buffalo District of the Communist Party?

A. Yes, sir.

Q. In 1931?

A. Yes, sir.

Q. What was the area covered by the Buffalo District?

A. It covers all of western New York and part of central New York and south central, and it took a little part of northwest Pennsylvania.

Q. Do you know the number of the district?
A. It was District No. 4.

. . . . . .

[fol. 52a] [File endorsement omitted]
[fol. 53]

Reporter's Transcript of Proceedings—
Filed December 22, 1958

Los Angeles, California
Wednesday, March 6, 1957

. . . . . .

[fol. 54] GEORGE E. DUEMLER called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

. . . . . .

Direct examination.

By Mr. Dooley:

. . . . . .

[fol. 55] Q. Where and when did you first become acquainted with the defendant Peter Chaunt?

A. In St. Louis in the early 1930's. The exact dates I can't give. But for approximately a 2-year period including the year 1933, I knew him very well.

. . . . . .

[fol. 56] By Mr. Dooley:

Q. Do you recall a specific meeting at which Mr. Chaunt advised you as to his business or profession?
[fol. 57] A. Yes.
Q. I will come back to that later.

The Court: When did it occur, where, and who was present?

By Mr. Dooley:

Q. When did it occur?
A. One such occasion was in Columbia, Missouri, in the

Tiger Hotel on July 3, 1933, in the ballroom of the hotel where a convention was in progress.

Q. What was the name and nature of this convention?

A. It was the Continental Congress of Workers and Farmers.

Q. Did you, Mr. Duemler, have any official capacity in connection with this convention?

A. Yes. I was the convenor of the convention and in the chair.

Q. Now, before this convention took place, had you had any conversations with the defendant concerning this convention?

A. Yes.

Q. About when?

A. Approximately two weeks, possibly a little more, prior to the July 3 date.

Q. Where did this conversation occur?

A. The first conversation that I remember was a telephone conversation, and I talked to Mr. Chaunt at least [fol. 58] once, possibly twice or three times, in person, about this convention.

Q. Do you recall where this occurred?

A. On one occasion at the Communist Party Headquarters in St. Louis.

Q. Where was the Communist Party Headquarters located in St. Louis?

A. In the 1200 block of Garrison Avenue. I think it was twelve forty something or twelve fifty something. It was on the west side of the street, an odd number. I don't remember the exact street address.

Q. Who requested this conversation?

A. Mr. Chaunt.

Q. Do you recall the exact words that were used at this conversation?

A. No, not all the exact words. I remember the substance of the conversation.

Q. What, in substance, did Mr. Chaunt say to you and what did you say to him?

Mr. Porter: Pardon me. May we know whether anyone else was present, your Honor.

The Witness: I think no one else was present, although I may be mistaken in that.

By Mr. Dooley:

Q. What, in susbtance, did Mr. Chaunt say to you and [fol. 59] what, in substance did you say to him?

A. He asked me to furnish credentials for the Communist Party to participate in the coming convention, and I told him that I had no alternative but to deny the request and stated my reasons.

Q. Going back to the convention, in what city did this convention take place?

A. Columbia, Missouri.

Q. And it was where?

A. At the Tiger Hotel.

Q. Were you present at the opening of the convention?

A. Yes.

Q. What was your capacity at the opening of the convention?

The Court: You have been all over this before. He said he was in the chair, that he called it.

Mr. Dooley: I am sorry. I didn't realize I had covered it.

The Court: You got into this because you were going to ask him about a conversation in which, as I understand it, he said the defendant told him what his occupation was, what he did, or who he was. You never did get around to asking him that.

Mr. Dooley: Well, I don't think the witness knows a specific date.

[fol. 60] The Court: He said he did. He said July 3, 1933, at the Tiger Hotel in Columbia, Missouri, and you never did ask him what was said about it.

Now, let us ask him now as long as we have the subject up.

What did he tell you at that time, if anything, about who he was or what his connection was or what his occupation was?

The Witness: This was in the convention hall while the convention was in session and I was in the chair trying

to organize the convention, which was made up of representatives of quite a number of organizations throughout the State, and Mr. Chaunt, at the head of a group of people, marched down the center aisle of the convention and openly demanded—

The Court: What did he say?

The Witness: He said, "I make a demand that credentials to furnished to the Communist Party," and several other organizations that he represented.

From the chair I denied his request, told him that the proper procedure was to appear before the credentials committee and, as I remember it, he renewed his demand and got a later promise from me that the convention would vote on his request if presented by the credentials committee.

I wouldn't remember too much of the exact words.

The Court: Had he ever prior to that time told you what his occupation was?

The Witness: Yes.

[fol. 61] The Court: When?

The Witness: On several occasions. Specifically, I know that—

The Court: About when?

The Witness: In one of the conversations that I related within the two-weeks prior to this July 3rd date.

The Court: Where?

The Witness: At the Communist Party Headquarters.

The Court: In St. Louis?

The Witness: In St. Louis.

The Court: Who was present?

The Witness: I think only Mr. Chaunt and I. There may have been someone else present, but I don't recall.

The Court: What did he tell you?

The Witness: He told me that he was the organizer, district organizer, of the Communist Party.

The Court: Did he tell you for what district?

The Witness: For the St. Louis district. I at that time knew the number of it. I don't remember it now. It was the district that took in St. Louis and the area around St. Louis.

It was not news to me then. He had told me on previous occasions that he was the party organizer for the district, and I had previously discussed that with him.

• • • • • • •

[fol. 62] Cross examination.

By Mr. Porter:

• • • • • • •

[fol. 63] Q. To use what has become a journalistic cliche in recent times, would it be fair to say that at that time and place Chaunt was "Mr. Communist"?

A. Well, in my mind that would be correct.

Q. And would you say that would be the community view at that time?

A. I don't think the community had any view, other than the groups of people who would have occasion to meet with the Communists or rub shoulders with them in some way or another.

Q. But at any rate when the Communist Party spoke publicly it spoke through him, is that right?

A. Well, as I said, he was not the public speaker of [fol. 64] the organization.

Q. Well, I don't mean speaking in a literal sense but figuratively.

A. I was at that time convinced, and I am now, that he was the one person in complete authority so far as the Communist Party was concerned in that area.

• • • • • • •

[fol. 65] JOHN LAUTNER called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

• • • • • • •

[fol. 66] Direct examination.

By Miss Martin:

Q. When did you first meet Mr. Chaunt?

A. I think it was in 1931.

[fol. 67] Q. Where was that?

A. That was in Hamilton, Ontario, in a Communist Party training school that we organized there.

Q. That what?

A. That we organized over there, the Canadian Communist Party.

Q. What was the occasion of your first meeting with Mr. Chaunt at that school?

A. I was the school director in addition to some other functions, and I had a discussion with Sam Carr, who was the executive secretary of the Canadian Communist Party, that we needed help in covering subject matters in the school, and he suggested to get the aid, the help, of some party leaders from the States, and Peter Chaunt, who at that time was district organizer of the Communist Party in Buffalo, was one of them who was considered as coming in to the class, and I think it was Leo Rosztovsky, who was also at that time in Canada, who either called Peter Chaunt or went over to Buffalo to bring him over, and Peter Chaunt was in the class for about three days.

Mr. Porter: I move to strike all of that answer except the last part, to the effect that Peter Chaunt was in that class for about three days, on the ground that it is irrelevant and immaterial and unrelated to any issue in the case, and hearsay, if your Honor please.

[fol. 68] The Court: Motion granted.

Miss Martin: Your Honor, it might be unresponsive in part to the question, but I think it is all matter that is material and which would be elicited in response to subsequent questions, and on that ground I move to reinstate it.

The Court: Motion denied.

Just listen to the questions, Mr. Lautner, and answer them as precise as you can. If you feel your answers need any explanations, you may add an explanation. But first answer the question.

The Witness: Yes, sir.

By Miss Martin:

Q. You saw Mr. Chaunt in attendance at the 3-day session of this Canadian school?

A. Yes.

Q. Did you have anything to do with the fact that Mr. Chaunt was one of the pupils at the school?

Mr. Porter: I object to the question on the ground that it is irrelevant, incompetent and immaterial and calls for a conclusion.

The Court: Sustained.

By Miss Martin:

Q. Do you know how it came about that Mr. Chaunt was one of the persons who was a student at the school?

A. Yes.

[fol. 69] Q. Will you tell us how?

A. Well, it came about by me asking for additional help in covering the subject matters in the school from the Canadian Party, and it came about—

Mr. Porter: It seems to me that that answers the question, your Honor.

The Court: Yes.

Did he come to the school in response to this request you made?

The Witness: Yes, your Honor.

The Court: Did you meet him then?

The Witness: Yes.

The Court: Was he introduced to you by someone or did he introduce himself?

The Witness: Well, he was introduced.

The Court: By someone?

The Witness: That is correct.

The Court: Who was that someone?

The Witness: Well, Leo Rosztovsky was one of them.

The Court: Who was present at the time?

The Witness: The whole class.

The Court: How many in the class?

The Witness: About 20 students.

The Court: It was at this school?

The Witness: That is correct.

[fol. 70] The Court: In Canada?

The Witness: In Hamilton, Ontario.

The Court: What was the time?

The Witness: This was in the summer of 1931.

The Court: What was said at the time the defendant was introduced to you? What was the substance of it?

The Witness: That he was Peter Chaunt and he came over upon request from Buffalo and he was to teach in the school.

The Court: What did he say? Was that all said?

The Witness: Well, that was about all.

The Court: Was that said at that time on that occasion?

The Witness: In substance, that he was here and teaching.

The Court: Who said that?

The Witness: Rosztovsky.

The Court: What did the defendant say, if anything?

The Witness: I have no recollection. I was glad that he was there. He came to teach because we were short of teachers.

By Miss Martin:

Q. Did he subsequently teach at the school?

A. Yes.

Q. Did you attend any of the classes which he taught?

A. I was there all the time.

Q. How many classes did he teach?

A. Three days.

[fol. 71] Q. Regarding the first day at the class that he taught, do you remember anything that he said?

A. No. I only remember the subject matter that he taught.

Q. What was the subject matter?

A. Leninism.

Q. Do you remember the substance of his teachings on Leninism?

A. I wouldn't.

Q. When you say "Leninism," what do you mean?

Mr. Porter: I object to that question on the ground it is irrelevant and immaterial.

The Court: Overruled.

The Witness: Leninism was a subject matter teaching th basic principles, writings, of Lenin, and its application a that particular time.

The Court: What did he teach in the second?

The Witness: All three days.

The Court: That is what he taught all three days?

The Witness: That is correct, because other teacher taught other subject matters.

By Miss Martin:

Q. Now did Mr. Chaunt attend any of the other classe that were taught by other teachers, do you know?

A. No, I don't think so.

[fol. 72] Q. Did you have any further conversations wit him at the time of this school in Canada?

A. No. Outside of class I didn't see Peter Chaunt.

Q. When did you next see him after the conclusion o this school?

A. Well, I met him at National Committee meetings an national conventions as district organizer. I was a distric organizer in West Virginia, he was in Missouri after 1936 and I met him in National Committee meetings and con ventions.

Q. Do you remember the first convention at which yo met Mr. Chaunt?

A. Well, the one that stands out in my mind, he cam into this particular convention with a delegation of nu pickers that we put on strike in Missouri at that time. think it was the 1938 convention.

The Court: In this school in Hamilton, Ontario, was h connection, if any, with the Communist Party made know to you by him?

The Witness: Yes.

The Court: Did he tell you something about it?

The Witness: Your Honor, I wouldn't recall.

The Court: How was he known to you at the scho there?

The Witness: He was known to me as a party lead prior to this meeting. I knew of him, for instance, as a d trict organizer in Connecticut when I joined the Commun

[fol. 73] Party, and him being a Hungarian and I was a Hungarian there was a mutual interest.

The Court: How did you know him there at the school? How was he known to you? Did he hold some office?

The Witness: Yes.

The Court: Was he known to you as holding some office?

The Witness: Yes. At that time he was known to me as the district organizer of the Communist Party in Buffalo, the upstate New York district of the Communist Party.

By Miss Martin:

Q. Now you say you met him at a national convention in 1938. Where was that national convention held?

A. Well, that convention was held in New York City in 1938. I think it was in Manhattan Center on 34th Street.

Q. Do you remember the occasion where you met Mr. Chaunt at that convention?

A. Well, it was a Communist Party convention and every delegate met everybody else.

Q. How many days did the convention last?

A. Three or four days.

Q. You saw him in attendance at the first day, did you?

A. He was head of his delegation from Missouri and I was held of my delegation from West Virginia.

* * * * * * *

[fol. 74] The Court: Mr. Lautner will now resume the stand.

JOHN LAUTNER called as a witness by the plaintiff, being previously sworn, resumed the stand and testified further as follows:

Direct examination (Continued).

* * * * * * *

[fol. 75] By Miss Martin:

Q. When was the last time you saw the defendant Peter Chaunt prior to this afternoon?

A. I think it was in 19—in the winter of 1945, late in 1945.

Q. And where was that?

A. In Cleveland, Ohio.

Q. What was the occasion? Was anyone else present?

A. Yes.

[fol. 76] Q. Who else was present?

A. We were organizing a district bureau—

Q. When you say "we" who do you mean?

A. I was the national secretary of the Hungarian Bureau at that time.

Q. Of the Communist Party.

A. Of the Communist Party.

• • • • • • • •

[fol. 77] By Miss Martin:

Q. You were naming the persons who were present at the time you last saw Mr. Chaunt.

A. At this particular meeting?

Q. Yes,

A. There was a person who was the wife of the superintendent of the building where we were meeting. It was the Hungarian Workers Home on Buckeye Road in Cleveland, Ohio, and Pete Chaunt, and one or two others—

Q. Do you know in what capacity Mr. Chaunt attended that meeting?

A. Yes.

Q. What capacity?

A. He was at that time the district representative to this meeting.

[fol. 78] Q. District representative of what?

A. Of the Ohio District of the Communist Party. He was the nationality group secretary in the Cleveland District at that time.

Q. What did he say at that meeting, if anything?

A. Well, I don't know the exact words of what was said

Q. Do you know the substance of what was said?

A. There were two things that we have to resolve a this meeting, one to instill in those present a more vigilar attitude toward reversionism of the Browder type, to erad cate any vestiges of his thinking in the minds of th

Hungarian Party membership in Cleveland, Ohio, and to organize a bureau that will give leadership to the Hungarian community, the party members and the party sympathizers in that district.

These were the two problems that we tackled there.

• • • • • • •

[fol. 79] [File endorsement omitted]

Reporter's Transcript of Proceedings—
Filed December 22, 1958

Los Angeles, California
Thursday, March 7, 1957

• • • • • • •

[fol. 80] JOHN LAUTNER, the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

• • • • • • •

[fol. 81] The Witness: The next time, my recollection is that I came in from West Virginia somewhere in the summer of 1940 and had a discussion with Chaunt on one of the students that I sent to the International Workers, or the school, on the progress he made in that school.

Mr. Porter: I think the question was answered some time ago.

By Miss Martin:

Q. Where was this discussion held?

A. At the IWO Headquarters at 85th Avenue, New York.

Q. Who else was present?

A. I have no recollection.

Q. What was said, if anything, at that time by you or Mr. Chaunt?

A. Well, I asked him what his estimate was about the student that we sent from Fairmont, West Virginia, to that school.

The Court: To what school?

[fol. 82] The Witness: To the IWO Training School.

The Court: Where?

The Witness: New York City.

[fol. 83] Q. And what is the meaning of IWO?

A. The International Workers Order.

Q. What was that?

A. That was a fraternal sick and death benefit unde the leadership of the Communist leaders in the organ zation.

Mr. Porter: I move to strike the phrase, "under th leadership of—" whatever it was, on the ground that thi is an opinion and conclusion without foundation havin been laid.

The Court: That is the way it was known to you?

The Witness: I was one of them later on. I was nationa secretary of the Hungarian section of it.

The Court: Motion denied.

By Miss Martin:

Q. When you were the national secretary of the Hun garian section of the IWO were you assigned to tha position as a member of the Communist Party?

A. That's right.

Q. Now, at the time you had this conversation with Mr Chaunt in 1940 what was said, if anything?

A. Well, in substance I inquired about the progress o this particular student who I sent up to that trainin school. He was from Fairmont, West Virginia and h name was Manuel, Emanuel Valone.

Q. Did Mr. Chaunt say something about the progress o this student?

[fol. 84] A. I wasn't in the—

Q. My question was, did Mr. Chaunt give you a repo with regard to this student?

A. Evidently he did. I have no recollection what he sai

The Court: What was the occasion of your inquiri about this student from him, from the defendant?

The Witness: Mr. Chaunt was the assistant school rector of the International Workers Order and in char of that schooling.

The Court: At that time?
The Witness: At that time.

By Miss Martin:

Q. Did he hold that position as an assignment from the Communist Party? Do you know?

Mr. Porter: I object to that question as calling for hearing and conclusion.
The Court: Sustained.

By Miss Martin:

Q. When did you next see Mr. Chaunt?
A. Well, my recollection is that 1940, summer, up to November 1942, I met Mr. Chaunt on numerous occasions, practically—there were times every day when we were working out of the same office, same floor, from the same organization, the International Workers Order.

Mr. Porter: Excuse me. We have a complicated order, because this answer involves an overlapping of periods [fol. 85] here and perhaps it isn't necessary for me to call attention to that, but I wanted to move to strike any reference to the period after naturalization in this answer in line with the position taken by the defendant earlier which your Honor permitted.
The Court: Very well. You may reserve a motion, if you wish, to strike any testimony with respect to any acts and conduct of the defendant subsequent to naturalization. And the motion will be denied.
Miss Martin: Did you complete your answer to that question?
The Witness: I did.
The Court: This International Workers Order, was it an organization that you participated in the organizing of?
The Witness: Your Honor, this organization was a sick and death benefit fraternal organization controlled, directed and dominated by the Communist Party. It was a multi-national organization. They had a Hungarian section, Ukranian section, Russian section, Lithuanian section, all

kinds of national group sections in it; total membership was somewhere around 160,000.

Now, they had an over-all general leadership like president, executive secretary and various other functionaries, and then each national group on its own, as a section, had a national secretary and a staff working in that particular national group. So, that's the type of organization it was. [fol. 86] And in 1941, spring, a number of us from the Communist Party were sent into that organization by the Communist Party into leadership to give more political content and strength and guidance for that organization. I was amongst one of those who was sent in by the Communist Party into that organization at that time, and I just became a member about a month before then.

The Court: Was the defendant in the organization at that time?

The Witness: Yes, he was. He was on the educational staff. I think he was assistant school director, education, to Emanuel Lavine, who was educational director of the general staff.

The Court: That was in 1940?

The Witness: 1941. Well, '41 when I went in there.

The Court: When was the first time you knew the defendant to be connected with that organization?

The Witness: All along in the 1940's, '39, '41, '42, up to about—until I left for the Army. When I came back in '45 I have no recollection that he was with the organization; or, he may have been for a few months. I don't know.

The Court: What position or what connection did you know him to have at that time, the time you last knew of his connection?

The Witness: As a full-time functionary in that organi [fol. 87] zation.

The Court: Did he hold some office?

The Witness: Yes.

The Court: That is what I am asking.

The Witness: Assistant educational director or schoo director.

By Miss Martin:

Q. When you say a "full-time functionary," what do you mean by that?

A. Full-time paid person who devotes all his time and energy to his particular assignment which he has.

Q. And is "functionary" a word used in the Communist Party?

The Witness: It is.

The Court: What meaning does it have when used in the Communist Party?

The Witness: It means—a functionary in the Communist Party is a person who has a specific responsibility designated to him as an individual. If that responsibility takes up part of his time he is known as a "part-time functionary." If it takes up all his time, that functionary is known as a "full-time functionary" or "professional revolutionary" in the Communist Party.

* * * * * * *

[fol. 88] Cross examination.

By Mr. Porter:

Q. Mr. Lautner, I am not very clear as to exactly when and where and how you claim to have known the defendant Peter Chaunt, and I want to ask you a number of questions about your own career in order to try to clarify this point.

Now, as I understand it, your first acquaintance with the defendant took place at the training school in Hamilton, Ontario, in the summer of 1931, is that right?

A. Somewhere around that. Yes, that is correct.

Q. You had not previously met the man you call Peter Chaunt?

A. I wouldn't say that. I have no recollection of it. I may have met him before that. I knew of him before that, but I have no recollection that I met him before that.

Q. You say you knew of him before?

A. That is correct.

[fol. 89] Q. What did you know of him before?

A. I knew him as a party leader who was developed by the Hungarian Communist Movement in the United States

and given over to the general movement as one of the outstanding party leaders of the American party in the last 1920's and early 1930's.

• • • • • • •

[fol. 90] Q. Would you say that he was well known in the party?

A. Well, in leading circles he was well known.

The Court: What do you mean by "leading circles"?

The Witness: High functionaries of the party and so-called old-timers in the party, he was well known.

By Mr. Porter:

Q. And he was, of course, well known by the membership, was he not, in the district which he headed—.

A. I suppose he was.

• • • • • • •

[fol. 91] Offers in Evidence

Miss Martin: I want, at this time, to offer in evidence Government's Exhibits 1-A, 1-B, 1-C, 1-D and 1-E, which are identified—

The Court: Is the foundation covered by the stipulation?

[fol. 92] Miss Martin: Yes, I believe it is, your Honor.

The Court: Do you agree, Mr. Porter?

Mr. Porter: At the moment I don't recall what those are, your Honor.

Miss Martin: Those are certified copies from the New Haven courts of the various charges of arrests as alleged in the complaint.

Mr. Porter: Their admissibility is stipulated to, your Honor.

The Court: Very well. Then Exhibits 1-A, 1-B, 1-C, 1-D and 1-E for identification are now received in evidence.

(The exhibits referred to, marked Plaintiff's Exhibits 1-A to 1-E, inc., were received in evidence.)

• • • • • • •

[fol. 93]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 1-A FOR IDENTIFICATION

Case #15907-WM
Witness: Peter Chaunt
E. Kent Snyder, N.P.
May 5, 1955

Page 1 of 3

STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.* CITY OF NEW HAVEN

30 Day of July A. D. 1929

To the Honorable City Court of New Haven, holden within and for the City and Town of New Haven in New Haven County, comes Harry M. French, City Attorney, of the City of New Haven, and on his oath of office complaint and information makes, that on the 30 day of July A. D. 1929, at said City and Town of New Haven, Peter Chaunt of the said City and Town of New Haven, did then and there distribute in a public Street, to wit: Ashmun Street certain hand-bills against the peace of the State, of evil example, and contrary to the Ordiance in such case made and provided.

Ord. 729

[fol. 94]

Wherefor the said Harry M. French City Attorney, prays process, and that the

Peter Chaunt

said may be arrested, held to answer this complaint, and be thereon dealt with according to law.

Dated at New Haven, the day and year aforesaid.

H. M. French *City Attorney*

STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.* CITY OF NEW HAVEN

30 Day of July A. D. 19

To the Sheriff of said County of New Haven, his Dep
or either of the Constables of the Town of New Ha
within said County, and to any member of the Po
Department of the City of New Haven, GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT. YOU
hereby commanded to arrest the body of the within nam

Peter Chaunt

and him her forthwith have before the City Court
New Haven, holden within and for the City and To
of New Haven in New Haven County, to answer to
charges alleged against him her in the foregoing compla
of Harry M. French City Attorney, of the City of N
Haven, in said County, and be dealt with thereon as the
directs.

Hereof fail not, but of this warrant, service and ret
make, according to law.

Dated at New Haven, the day and year last aforesaid

..... *Judge of said City Co*
H. M. French *City Attorney of said C*

1-A (E.K.S.)
Page 2 of 3

[fol. 95]

COPY

Date Aug. 3 1929 No. 135

STATE

vs.

Peter Chaunt

Complaint and Information for
Illegal Distributing of Hand Bills

Guardian ad litem: Attorney L. Sachs

Plea, Not Guilty Found Not Guilty

Discharged

Binding over Bond, $
Appeal Bond,
Bondsman,

Ordered to be imprisoned days in New Haven County Jail.
To pay fine of $
To pay cost of Prosecution taxed at $
and to stand committed until judgment is satisfied.

Court,	$3.00
Subpoena,	.25
Officers' Fees,	
Witness' Fees,	
Expenses Allowed,	
Custody of Prisoner day at $1.00 per day	
	$
Costs { Commitment	
	$

Continuance Bond, $
Bondsman,

Continued from to
" " "
" " "
" " "
" " "
" " "

Operator's License No.
Registration No.
Police Record No. 89265

A. E. DeCapua, asst. Clerk

NEW HAVEN COUNTY, *ss.* CITY OF NEW HAVEN,

July 30 A. D. 1929

Then and there by virtue of the within complaint and warrant, I arrested the body of the within named, Peter Chaunt and read the same in his her hearing, and now have him her them here in Court, before the City Court of New Haven, holden within and for the City and Town of New Haven, in New Haven County, for examination.

FEES:

Travel to arrest, miles at 10 cents per mile,	$
Arrest,	
Travel to Court with prisoner, miles, at 25 cents per mile,	
	$
Summoning witnesses, readings, at 12 cents per reading,	
Travel to summons miles, at 10 cents per mile,	
Attendance at Court with prisoner, days, at 50 cents per day,	
Endorsement of service of subpoena,	.12
Expenses in producing prisoner,	$

Attest:

Edward Twohill
Policeman.

[fol. 96]

THE CITY COURT OF NEW HAVEN,

NEW HAVEN, CONNECTICUT.

STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.*

State CLERK'S OFFICE.

vs.

Peter Chaunt

I, Maxwell A. Alderman, Clerk of the City Court of New Haven, in the County of New Haven, and the State of Connecticut, and keeper of the files, records, and seal thereof, do hereby certify that the attached and foregoing is a true and complete copy of Warrant No. 135 dated August 3, 1929 in the name of the above as appears in our records.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at New Haven, this 24th day of June A. D. 1953.

/s/ MAXWELL A. ALDERMAN
Clerk.

[Seal
Municipal Court
Official Seal
New Haven, Conn.]

1-A (E.K.S.)
Page 3 of 3

[fol. 97]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 1-B FOR IDENTIFICATION

Case #15907-WM
Witness: Peter Chaunt
E. Kent Snyder, N.P.
May 5, 1955

Page 1 of 3

STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.* CITY OF NEW HAVEN

21 Day of Dec. A. D. 1929

To the Honorable City Court of New Haven, holden within and for the City and Town of New Haven in New Haven County, comes HARRY M. FRENCH City Attorney, of the City of New Haven, and on his oath of office complaint and information makes, that on the 21 day of Dec. A. D. 1929, at said City and Town of New Haven, Peter Chaunt Temporarily of said City and Town did make an oration, harangue, or other public demonstration in New Haven Green, outside of the churches.

Page 609 Charter & Ordinances

[fol. 98]

Wherefor the said City Attorney, prays process, and that the Peter Chaunt said may be arrested, held to answer this complaint, and be thereon dealt with according to law.

Dated at New Haven, the day and year aforesaid.

H. M. French *City Attorney*

1-B (E.K.S.)
Page 2 of 3

STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.* CITY OF NEW HAVEN

21 Day of Dec. A. D. 1929

To the Sheriff of said County of New Haven, his Deputy or either of the Constables of the Town of New Haven within said County, and to any member of the Police Department of the City of New Haven, GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT. You are hereby commanded to arrest the body of the within named

Peter Chaunt

and him her forthwith have before the City Court of New Haven, holden within and for the City and Town of New Haven in New Haven County, to answer to the charges alleged against him her in the foregoing complaint of HARRY M. FRENCH Attorney, of the City of New Haven, in said County, and be dealt with thereon as the law directs.

Hereof fail not, but of this warrant, service and return make, according to law.

Dated at New Haven, the day and year last aforesaid.

..... *Judge of said City Court.*
H. M. French *City Attorney of said City.*

[fol. 99]

COPY

Date Dec. 27 1929 No. 512

STATE

vs.

PETER CHAUNT

Complaint and Information for Violation Park Rules

Guardian ad litem: Attorney

Plea, Not Guilty Found Guilty

J. S.

Binding over Bond, - - - - - - - - - $
Appeal Bond, - - - - - - - - -
Bondsman,

Ordered to be imprisoned days in New Haven County Jail
To pay fine of - - - - - - - - $
To pay cost of Prosecution taxed at $
and to stand committed until judgment is satisfied.

Court, - - - - - - - - - -	$3.00
Subpoena, - - - - - - - - - -	.25
Officers' Fees, - - - - - - - - -	
Witness' Fees, - - - - - - - - -	
Expenses Allowed, - - - - - - - - -	
Custody of Prisoner day at $1.00 per day	
	$
Costs } Commitment - - - - - -	
	$

Continuance Bond, $
Bondsman,

Continued from to
" " "
" " "
" " "
" " "
" " "

Operator's License No. .....
Registration No. .....
Police Record No. 89265

A. E. DeCapua, asst. Clerk

12/27/29 Demurrer Filed
12/27/29 Demurrer overruled—Whitaker, J.

NEW HAVEN COUNTY, *ss.* CITY OF NEW HAVEN,

Dec. 21 A. D. 1929

Then and there by virtue of the within complaint and warrant, I arrested the body of the within named, Peter Chaunt and read the same in his her hearing, and now have him her them here in Court, before the City Court of New Haven, holden within and for the City and Town of New Haven, in New Haven County, for examination.

FEES:

Travel to arrest, miles at 10 cents per mile,	$
Arrest,	
Travel to Court with prisoner, miles, at 25 cents per mile,	
	$
Summoning witnesses, readings, at 12 cents per reading,	
Travel to summons miles, at 10 cents per mile,	
Attendance at Court with prisoner, days, at 50 cents per day,	
Endorsement of service of subpoena,	.12
Expenses in producing prisoner,	$

Attest:

John McCormack
Policeman.

[fol. 100]

THE CITY COURT OF NEW HAVEN,
NEW HAVEN, CONNECTICUT.

STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.*

State CLERK'S OFFICE.

vs.

Peter Chaunt

I, Maxwell A. Alderman, Clerk of the City Court of New Haven, in the County of New Haven, and the State of Connecticut, and keeper of the files, records, and seal thereof, do hereby certify that the attached and foregoing is a true and complete copy of Warrant No. 512 dated December 27, 1929 in the name of the above as appears in our records.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at New Haven, this 24th day of June A. D. 1953.

/s/ MAXWELL A. ALDERMAN
Clerk.

[Seal
Municipal Court,
Official Seal
New Haven, Conn.]

1-B (E.K.S.)
Page 3 of 3

[fol. 101]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 1-C FOR IDENTIFICATION

Case #15907-WM
Witness: Peter Chaunt
E. Kent Snyder, N.P.
May 5, 1955
Page 1 of 2

STATE OF CONNECTICUT) CITY COURT OF NEW HAVEN
vs) CITY OF NEW HAVEN
PETER CHAUNT) DECEMBER 27th, 1929.

DEMURRER

The accused, Peter Chaunt, demurs to the information as filed in this case, and as reasons therefor sets forth the following:

1. The information is insufficient in law.

2. The information does not state facts constituting an offense.

3. The ordinance under which the accused is charged is unconstitutional and void in that it violates Paragraphs 1, 5, and 6, of Article First of the Constitution of Connecticut and the Fourteenth Amendment of the Constitution of the United States.

4. It appears from the information that the accused is charged with making an oration, harangue, or other public demonstration in New Haven Green, although there is no allegation in said information stating that said New Haven Green is a public park; and on the contrary, it appears from said information that the place where the accused is charged with making said oration, harangue, or other public demonstration is not a public park within the meaning of said Rule 5 of the Park Regulations.

The Accused, Peter Chaunt;

By JACOB BELFORD
His Attorney

[fol. 102]

(Copy)

CITY COURT OF NEW HAVEN
CITY OF NEW HAVEN

STATE OF CONNECTICUT

vs

PETER CHAUNT

DEMURRER

DEMURRER** OVERRULED
WHITAKER J.

Belford and Manfreda
Attorneys and Counselors at Law
39 Church Street
New Haven, Conn

1-C (E.K.S.)
Page 2 of 2

[fol. 103]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 1-D FOR IDENTIFICATION

Case #15907-WM
Witness: Peter Chaunt
E. Kent Snyder, N.P.
May 5, 1935

Page 1 of 2

STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.* CITY OF NEW HAVEN,
11th day of March A. D. 1930

To the Honorable City Court of New Haven, holden within and for the City and Town of New Haven, in New Haven County, comes Daniel Pouzzner, Assistant City Attorney of the City of New Haven, and on his oath of office complaint and information makes, that on the 11th day of March A. D. 1930, at said City and Town of New Haven

Peter Chaunt

the accused did commit violate

General Breach of the Peace

Wherefore the said Assistant City Attorney prays process, that the said accused may be arrested, held to answer this complaint and be thereon dealt with according to law.

Dated at New Haven, the day and year aforesaid.

Daniel Pouzzner, *Assistant City Attorney.*

STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.* CITY OF NEW HAVEN,
11th day of March A. D. 1930

To the Sheriff of said County of New Haven, his Deputy, or either of the Constables of the Town of New Haven, within said County, and to any member of the Police Department of the City of New Haven—GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT, YOU are hereby commanded to arrest the body of the within named

Peter Chanut

and him, her, them forthwith have before the City Court of New Haven, holden within and for the City and Town of New Haven, in New Haven County, to answer to the charges against him, her, them in the foregoing complaint of Daniel Pouzzner, Assistant City Attorney of the City of New Haven, in said County, and be dealt with thereon as the law directs.

Hereof fail not, but of this warrant, service and return make, according to law.

Dated at New Haven, the day and year last aforesaid.

Daniel Pouzzner, *Assistant City Attorney.*

[fol. 104]

NEW HAVEN COUNTY, *ss* CITY OF NEW HAVEN,

March 11th A. D. 1930

Then and there by virtue of the within complaint and warrant I, Officer Frank X. Keane No. ..... Sta. ..... arrested the body of the within named,

Peter Chaunt

Age ..... Police Record No. 89265

Operator's License No. .....

Registration No. .....

and read the same in his her hearing, and now have him her them here in Court, before the City Court of New Haven, holden within and for the City and Town of New Haven, in New Haven County, for examination.

Frank X. Keane
Policeman.

65c

Date Mar 12 1930 No. 172

STATE

COPY *vs.*

Name Peter Chaunt

Address .....

City .....

Complaint and Information for

1 Gen. Breach of the Peace

Attorney: Jacob Belford,

Count	Plea	Finding	Ordered to be imprisoned in New Haven County Jail and/or to pay fine of
1	N.G.	G.	$25.00

To stand committed until judgment is satisfied.

Appealed

Continuance Bond $

Appeal Bond $

Binding Over Bond $

By the Court:

A. E. DeCapua
Asst. Clerk

[fol. 105]
STATE OF CONNECTICUT,
NEW HAVEN COUNTY, *ss.*

THE CITY COURT OF NEW HAVEN,
NEW HAVEN, CONNECTICUT

State — CLERK'S OFFICE.
vs.
Peter Chaunt

I, Maxwell A. Alderman, Clerk of the City Court of New Haven, in the County of New Haven, and the State of Connecticut, and keeper of the files, records, and seal thereof, do hereby certify that the attached and foregoing is a true and complete copy of Warrant No. 172 dated March 12, 1930 in the name of the above as appears in our records.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at New Haven, this 24th day of June A. D. 1953.

/s/ MAXWELL A. ALDERMAN
Clerk.

[Seal
Official Seal
Municipal Court
New Haven, Conn.]

1-D (E.K.S.)
Page 2 of 2

[fol. 106]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 1-E FOR IDENTIFICATION

Case #15907-WM
Witness: Peter Chaunt
E. Kent Snyder, N.P.
May 5, 1955
Page 1 of 3

STATE OF CONNECTICUT,
New Haven County,
Clerk's Office. *ss.*

I, John V. Kilbride, Assistant Clerk of the Court of Common Pleas within and for the County of New Haven, in

the State of Connecticut, and keeper of the records and seal thereof, do hereby certify that the above and foregoing is a true copy of the Information and Disposition in this Court of the case of STATE vs PETER CHAUNT appealed from City Court of New Haven.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at New Haven, this 24th day of June A. D. 1953.

/s/ JOHN V. KILBRIDE
Assistant Clerk.

[Seal
Court of Common Pleas
County of New Haven
State of Connecticut]

[fol. 107]

STATE OF CONNECTICUT) Criminal Court of Common Pleas
vs.) New Haven County
PETER CHAUNT) April Term A. D. 1930

Edwin S. Pickett, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, now here in Court, information makes that at the Town of New Haven, within the County of New Haven, on the 11th day of March, 1930, Peter Chaunt of New Haven, with force and arms, did then and there disturb and break the peace by tumultuous and offensive carriage, noise and behavior, against the peace, of evil example, and contrary to the Statute in such case made and provided; whereupon the Attorney prays the advice of this Honorable Court in the premises.

EDWIN S. PICKETT
Prosecuting Attorney.

1-E (E.K.S.)
Page 2 of 3

[fol. 108]

No. 28

STATE

vs.

PETER CHAUNT

Court of Common Pleas,
New Haven County
April Term, 1930
Information for
Breach of the Peace

years old Esq.
appointed Guardian ad Litem 195

Plea, Not Guilty
Election of trial by Court
Date of Plea Apr. 7, 1930
Plea Changed to Guilty,

Verdict: Adjudged Guilty
Sentenced to pay a fine of $
and to be imprisoned in the
County Jail for a period of
Nolled April 7, 1930
E.S.P.

Date of Sentence 195

Warrant Issued
Recorded, Vol. 7, Page 238

1-E (E.K.S.)
Page 3 of 3

[fol. 108a]

GOVERNMENT'S EXHIBIT 15 IN EVIDENCE

Case No. 15907
US vs. Chaunt
Date 3/7/57
Clerk, U.S. District Court, Sou. Dist. of Calif.
/s/ P D HOOSER *Deputy Clerk*

[fol. 109]

IN UNITED STATES DISTRICT COURT

JUDICIAL DEPARTMENT

CITY OF NEW HAVEN

OFFICE OF THE PROSECUTOR

BERNARD P. KOPKIND
PROSECUTOR

HENRY J. DEVITA, JR.
ASSISTANT PROSECUTOR

GEORGE J. GRADY
ASSISTANT PROSECUTOR

PHILIP E. MANCINI, JR.
ASSISTANT PROSECUTOR

169 CHURCH STREET
NEW HAVEN 6, CONNECTICUT

[Stamp
Received
Mar 21 1955
U. S. Attorney
Los Angeles, Calif.]

15th March
1 9 5 5

Laughlin E. Waters
United States Attorney
Southern District of California
Los Angeles, California

Dear Sir:

In reply to your letter of March 9th, 1955 please find below the copy of the New Haven City Ordinance, #729, of 1929 and also the copy of the contents of page 609 of Charter and Ordinances for the City of New Haven, Connecticut in 1929:

City Ordinance—Section # 729:

No person, firm or corporation shall distribute, throw or drop, or cause to be distributed or dropped in any of the streets or public squares of said city, any posters, hand-

bills, advertising cards or other substance used for the purpose of advertising.

Rules and Regulations to Govern the Use of City Squares Under Control of the New Haven Commission of Public Parks:

It is Forbidden

1—To pick flowers or shrubs, or injure any growing thing. To break, move or disfigure benches, fences, drinking fountains or other structures. To mark any object with notice or advertisement.

2—To carry fire-arms, light bonfires, discharge fire-works or fire-crackers except by the consent of the Park Commission.

3—To play ball, football, or any games which needs implements, except upon designated playgrounds, or throw stones, or cycle on the paths.

4—To use threatening, indecent, abusive or insulting language or gesture on any of said squares. Nor shall any oration harangue, or other public demonstration be made outside of the Churches on the Green, unless by special authority of the said Commission.

5—To offer any articles for sale, except newspapers, unless by special license.

6—To disturb or injure birds, their nests, squirrels or other animals.

(Continue)

[fol. 110] *Continue:*

6—To leave bottles, broken glass, ashes, paper or other rubbish, except in Receptacles duly marked.

7—Any person violating the foregoing Rules and Regulations shall be fined five dollars for each violation.

Very truly yours

/s/ PHILIP E. MANCINI
Philip E. Mancini
Ass't Prosecutor

PEM/jfm

Case No. 15907 w M
US vs. Chaunt
Date 3/5/57
Clerk, U.S. District Court, Sou. Dist. of Calif.
/s/ P D Hooser *Deputy Clerk*

[fol. 111]

Form A-2214
DEPARTMENT OF LABOR
IMMIGRATION AND NATURALIZATION SERVICE

JUN 1940 ACT OF MAY 2, 1934

APPLICATION FOR A CERTIFICATE OF ARRIVAL
and
PRELIMINARY FORM FOR PETITION FOR NATURALIZATION

No. 2 [illegible] 5921

For use in searching records of arrival:

RECORDS EXAMINED

Card index .....
Index books .....
Manifests .....

RECORD FOUND

Place .....
Name LEITNER, LADISLAUS
Date 12-26-21
Manner CARMANIA

Use Form 160-Im. in issuing certificate of arrival on this application.

8-21

Arthur Jennings 3-5-40
(Signature of person making search)

TO THE APPLICANT: Do not write above this line. Read carefully and follow the instructions on last page hereof.

Take or mail this application and your money order to—

Date November 8, 1939

IMMIGRATION AND NATURALIZATION SERVICE,
Federal Building, Christopher Street,
641 Washington Street,
New York, N. Y.

284604

I, Peter Chaunt, [redacted] New York, residing at [redacted] Bank, desire to file petition for naturalization in the [redacted] Court at New York, New York, in accordance with the naturalization law. I submit herewith a statement of facts to be used in filing such petition, two photographs of me, each of which I have signed, and my declaration of intention (first paper), if one is required.

See instructions on page 4 hereof, paragraph entitled "Money Order." If you are not exempted therefrom you must secure a money order in payment for a certificate of arrival and fill in the blank below:

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and inclose money order No. 108084 in the sum of $2.50 made payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D.C.," in payment for the certificate of my arrival.

I arrived in the United States through the port of New York, New York on December 26 1921
under the name of Leslie Bela Leitner
on the vessel S.S. Carmania

Additional facts to aid in locating a record of my arrival:

1. I have ..... used another name in this country than that given above. (If so) It was Leslie Bela Leitner
   I used that name because [illegible] for all purposes since [illegible]
2. The full name of the person shown on my steamship ticket was Leslie Bela Leitner
3. I was born in Budapest, Hungary on August 15 1899
4. My father's full name is was Edmond Leitner
5. My mother's maiden name was Serene Rose
6. (If a married woman) My maiden name was .....
7. My last foreign residence was Budapest, Hungary
8. The place where I took the ship or train which landed me in the United States was Southampton, England
9. The ticket on which I came to this country was bought at Rotterdam, Holland
10. (If arrival by ship) Name of steamship line was Cunard Line
    Third ..... I arrived as a passenger, steerage passenger, member of crew, or

PETER CHAUNT
Leslie Bela Leitner

Manifests

Name LEITNER, LADISLAUS

Date 12-26-21

Manner CARMANIA

Use Form 160-Im. in issuing certificate of arrival on this application.

8-21

Signature of person making search 3-5-40

TO THE APPLICANT: Do not write above this line. Read carefully and follow the instructions on last page hereof.

Take or mail this application and your money order to—

IMMIGRATION AND NATURALIZATION SERVICE,
Federal Building, Christopher Street,
641 Washington Street,
New York, N. Y.

Date November 8, 1939

284604

I, Peter Chaunt, [redacted] New York, residing at [redacted], desire to file petition for naturalization in the [redacted] Court at [redacted], in accordance with the naturalization law. I submit herewith a statement of facts to be used in filing such petition, two photographs of me, each of which I have signed, and my declaration of intention (first paper), if one is required.

See instructions on page 4 hereof, paragraph entitled "Money Order." If you are not exempted therefrom you must secure a money order in payment for a certificate of arrival and fill in the blank below:

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and inclose money order No. 108084 in the sum of $2.50 made payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D.C.," in payment for the certificate of my arrival.

I arrived in the United States through the port of New York under the name of Leslie Bela Leitner on the vessel S.S. Carmania on December 26 1921 (Month) (Day) (Year)

Additional facts to aid in locating a record of my arrival:

1. I have ..... used another name in this country than that given above. (If so) It was PETER CHAUNT
   I used that name because [redacted]
2. The full name of the person shown on my steamship ticket was Leslie Bela Leitner
3. I was born in Budapest Hungary on August 15 1899
4. My father's full name is/was Edmond Leitner
5. My mother's maiden name was Serene Rose
6. (If a married woman) My maiden name was
7. My last foreign residence was Budapest Hungary
8. The place where I took the ship or train which landed me in the United States was Southampton England
9. The ticket on which I came to this country was bought at Rotterdam
10. (If arrival by ship) Name of steamship line was Cunard Line
    first, second, or third cabin Third I arrived as a passenger, stowaway, member of crew, or otherwise Passenger
11. I traveled on (an immigration visa, a passport, or permit to reenter) Passport
12. My original Immigrant Identification Card No. NONE ISSUED AT THAT TIME is hereto attached [redacted], it is because
13. I paid $ 8 head tax at Rotterdam Holland
14. I was ..... examined by United States immigration officers at New York 1921
15. (If not examined, state why, and give the circumstances of your entry)
16. The person in the United States to whom I was coming was Serene Gati, (Mother)
17. The place in the United States to which I was going was New York, N. Y.
18. The names of some of the passengers or other persons I traveled with and their relationship to me, if any, are Travelled alone

I was previously in the United States from Never here previously

RECEIVED NOV 10 1939 NATURALIZATION [redacted] New York

111

X 14—2621

I have set forth below my answer to the following questions asked of me:

19. Have you been absent from the United States since the date of your arrival as stated on page 1 of this form? No

If so, state month and year you left ....; month and year you returned ....

To what country did you go? .... For what reason? ....

Is this the only time you have been out of the United States? ....

If not, give full particulars as to other absences ....

20. In what places in the United States have you resided?

New York	New York	From	December (Month)	1921 (Year)	to December (Month)	1925 (Year)
Cleveland	Ohio	From	December (Month)	1925 (Year)	to February (Month)	1929 (Year)
New Haven	Conn.	From	February (Month)	1929 (Year)	to November (Month)	1930 (Year)
Buffalo	New York	From	November (Month)	1930 (Year)	to August (Month)	1932 (Year)

J-2 - See attached sheet bearing No. 2-705927

21. What were the names and addresses of your employers during the five years immediately prior to the date of this statement?

Jewish Sanatorium (Employer's name) Dec. 1944-Sept 1947 (Date) Norristown, Pa. (Number and street) (City) (State)

International Workers Order (Employer's name) Sept 1947 to date (Date) 80 Fifth Ave., (Number and street) New York, N.Y. (City) (State)

22. Do you understand the principles of government of the United States? Yes

23. Do you fully believe in the form of government of the United States? Yes

24. Are you ready to answer questions as to the principles and form of government of the United States? Yes

What have you done to prepare yourself for an examination on the government of the United States?

Went to school, read and studied

25. Have you read the following oath of allegiance? Yes

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ...., of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So HELP ME GOD.

Are you willing to take this oath in becoming a citizen? Yes

26. If necessary, are you willing to take up arms in defense of this country? Yes

Did you claim exemption from the draft during the World War because you were an alien? No

Did you surrender your declaration (first paper) at that time? No

27. If not now married, have you ever been married? Was married Are you divorced? No 6-27-50

Are you a believer in the practice of polygamy? No

28. Are you a believer in anarchy? No Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? No

29. Have you ever been an inmate of an insane asylum? No 6-27-50

30. Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? No If so, give full particulars ....

(City or Town)	(State)		(Month) (Year)		(Month) (Year)
Cleveland	Ohio	From	December 1925	to	February 1929
New Haven	Conn.		February 1929		November 1930
Buffalo	New York	From	November 1930	to	August 1932

I [illegible] Atlantic Sheet Bearing No. 2-705927

24. What were the names and addresses of your employers during the five years immediately prior to the date of this statement?

Jewish Sanatorium Dec. 1st 1932 to Sept 1947 Moberton, Mo.
(Employer's name) (Date) (Number and street) (City) (State)

International Workers Order Sept 1947 to date 80 Fifth Ave., New York, N.Y.
(Employer's name) (Date) (Number and street) (City) (State)

22. Do you understand the principles of government of the United States? Yes
23. Do you fully believe in the form of government of the United States? Yes
24. Are you ready to answer questions as to the principles and form of government of the United States? Yes
What have you done to prepare yourself for an examination on the government of the United States?
Went to school, read and studied

25. Have you read the following oath of allegiance? Yes

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to [illegible], of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion; So HELP ME GOD.

Are you willing to take this oath in becoming a citizen? Yes

26. If necessary, are you willing to take up arms in defense of this country? Yes
Did you claim exemption from the draft during the World War because you were an alien? No
Did you surrender your declaration (first paper) at that time? No 6-27-48
27. If not now married, have you ever been married? Not Married Are you divorced? No
Are you a believer in the practice of polygamy? No
28. Are you a believer in anarchy? No Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? No
29. Have you ever been an inmate of an insane asylum? No 6-27-48
30. Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? No If so, give full particulars

31. (a) In what place in the United States did you meet for the first time your first witness named on the opposite page? [illegible]
How often have you seen this witness each month since the date you first met him (her)? 2 x M
At what places? Our respective homes
(b) In what place in the United States did you meet for the first time your second witness named on the opposite page? [illegible]
How often have you seen this witness each month since the date you first met him (her)? 2 x M
At what places? Our respective homes

I certify that all the statements made by me in this application and form are true to the best of my knowledge and belief.

Peter Chaunt - Leslie Bela Lecturer
(Signature of applicant)

No. 995893

[illegible] Ridgewood Park, New Rochelle, N.Y.
(Address at which applicant receives mail)

X 16—2021

112

[fol. 112a]

IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBITS 2F AND 2G IN EVIDENCE

Case No. 15907-WM
US vs. Chaunt
Date 3/5/57
Clerk, U.S. District Court, Sou. Dist. of Calif.
/s/ P D HOOSER *Deputy Clerk*

(See Opposite)

TRIPLICATE
(To accompany monthly report on Form 2208)

Hungarian

UNITED STATES OF AMERICA

No. 284604

PETITION FOR NATURALIZATION

U.S. District Eastern District Brooklyn N Y

To the Honorable the ..... *Court of* ..... *at* .....

The petition of PETER CHAUNT, hereby filed, respectfully shows:

(1) My place of residence is 3970-48th St., L.I. City, N.Y. (2) My occupation is Office Clerk

(3) I was born in Budapest, Hungary on August 15, 1899 My race is Hungar

[illegible] Court of [illegible]

(5) I am ..... married. The name of my wife is Elvi

we were married July 31, 1926 at Charleston, Mo. she was born at Springfield, Mass.

on Aug. 27, 1910; entered the United States at ..... on ..... for permanent residence therein,

and now resides at 3970-48th St., L.I.City, N.Y.; was not naturalized on .....

at ..... certificate No ..... I have 1 children, and the name, date,

and place of birth, and place of residence of each of said children are as follows: Mary, October 25, 1932, Chicago, Ill.

Resides at 3970-48th St., L.I.City, N.Y.

(6) My last foreign residence was Budapest, Hungary I emigrated to the United States of

America from Rotterdam, Holland My lawful entry for permanent residence in the United States

was at New York, under the name of Ladislaus Leitner

on December 26, 1921, on the vessel SS Carmania

as shown by the certificate of my arrival attached hereto.

(7) I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom (which) at this time I am a subject (or citizen), and it is my intention to reside permanently in the United States. (8) I am able to speak the English language. (9) I have resided continuously in the United States of America for the term

of 5 years at least immediately preceding the date of this petition, to wit, since December 26, 1921

and in the County of Queens, this State, continuously next preceding the date of this petition, since

February 1, 1940 Petition filed under Act of June 29, 1932 As Amended

(10) I have not heretofore made petition for naturalization to ..... on .....

at ..... and such petition was denied by that Court for the following reasons and causes, to wit:

and the cause of such denial has since been cured or removed.

Attached hereto and made a part of this, my petition for naturalization, are my [illegible] certificate from the Department of Labor of my said arrival and the affidavits of the two verifying witnesses required by law.

Wherefore, I, your petitioner, pray that I may be admitted a citizen of the United States of America, and that my name be changed to .....

I, PETER CHAUNT, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition was signed by me with my full, true name. SO HELP ME GOD.

(Complete and true signature of petitioner)

AFFIDAVITS OF WITNESSES

Serena Cuti, occupation Housewife

653003

we were married July 21, 1920 in [redacted], for permanent residence therein,

Aug. 27, 1920, entered the United States at [redacted] and now resides at 3970-48th St., L.I.City, N.Y. was not naturalized at [redacted] certificate No [redacted] That 1 children, and the name, date,

and place of birth, and place of residence of each of said children are as follows: Mary, October 28, 1922, Chicago, Ill.

Resides at 3970-48th St., [redacted] L.I.City, N.Y.

(6) My last foreign residence was Budapest, Hungary I emigrated to the United States of America from Rotterdam, Holland My lawful entry for permanent residence in the United States was at New York, under the name of Ladislaus Leitner on December 26, 1921, on the vessel SS Carmania as shown by the certificate of my arrival attached hereto. (7) I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom (which) at this time I am a subject (or citizen), and it is my intention to reside permanently in the United States. (8) I am able to speak the English language. (9) I have resided continuously in the United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since December 26, 1921 and in the County of Queens this State, continuously next preceding the date of this petition, since February 1, 1940

Petition filed under Act of June 29, 1906 As Amended

(10) I have not heretofore made petition for naturalization, No. [redacted] on [redacted] and such petition was denied by that Court for the following reasons and causes, to wit: at [redacted]

and the cause of such denial has since been cured or removed.

Attached hereto and made a part of this, my petition for naturalization, are my [redacted] certificate from the Department of Labor of my said arrival, and the affidavits of the two verifying witnesses required by law.

Wherefore, I, your petitioner, pray that I may be admitted a citizen of the United States of America, and that my name be changed to [redacted]

I, PETER CHAUET do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition was signed by me with my full, true name. SO HELP ME GOD.

(Complete and true signature of petitioner)

AFFIDAVITS OF WITNESSES

Serene Gati, occupation Housewife residing at 26 Edgewood Park, New Rochelle, N.Y. and Irving Simon, occupation Factory Manager residing at 1141 President St., Brooklyn, N.Y. each being severally, duly, and respectively sworn, deposes and says: I am a citizen of the United States of America. I have personally known and have been acquainted with the petitioner above mentioned, PETER CHAUET in the United States with December 1, 1926 and that to my personal knowledge the petitioner has resided in the United States continuously preceding since the date of filing this petition, of which this affidavit is a part, to wit, since the date last mentioned and at Long Island City in the County of Queens this State, since February 1, 1940 and that I have personal knowledge that the petitioner is and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief.

(Signature of witness) (Signature of witness)

Subscribed and sworn to before the [redacted] by the above-named petitioner and witnesses in the respective forms of oath shown above in the office of Clerk of said Court at Brooklyn, N.Y. this 27 day of June Anno Domini 1940 I hereby certify that Certificate of Arrival No. 2-706921 from the Department of Labor, showing the lawful entry for permanent residence of the petitioner above named, [redacted] has been by me filed with the papers in this proceeding and made a part of this petition.

Clerk [seal]

By Deputy

113

GPO

Form 2204—L-A
U. S. DEPARTMENT OF LABOR
IMMIGRATION AND NATURALIZATION SERVICE

No. 653003

Act of May 24, 1934

2604

X Peter Chaunt

ADJOURNMENTS				FINAL HEARING
FROM	TO	REASONS	EXAMINER	ADMITTED
				Date NOV 28 1940 19
				Grounds
				Examiner

RESULT OF EXAMINATION

Age 40 F-RE SE AC NCR anywhere No Abs. 2604

M-R/W and one child. Both Wits. 2XM

C/A in name Ladislans Leitner Derrenger 6-27-40

Act of 5-24-34: Applicant states 1st marriage for self and wife-not divorced or separated; marriage record and copy of wife's U.S. birth record seen. cd

Applicant states established a common-law marriage with present wife in [illegible] 1931 and has lived with her continuously since that

ADJOURNMENTS

FROM	TO	REASONS	EXAMINER

FINAL HEARING

ADMITTED

Date NOV 28 1940 19

Grounds

Examiner

RESULT OF EXAMINATION

Age 40 F-RE SE AC NCR anywhere No Abs. 2231604

M-R/W and one child. Both Wits. 2XM

C/A in name Ladislaus Leitner Derrenger 6-27-40

Act of 5-24-34: Applicant states 1st marriage for self and wife-not divorced or separated; marriage record and copy of wife's U.S. birth record seen. cd

Applicant states established a common-law marriage with present wife in Buffalo, NY in Aug. 1931 and has lived with her continuously since that time issue being one daughter born 10-25-32 at Chicago, Ill., that he prevailed on his wife to have lawful marriage performed and that such marriage took place at Charleston, Missouri 7-31-35. cd

Both witnesses claim to have seen applicant when he moved back to New York in June 20, 1937. cd

Organization- Fraternal Benefit Society of International Workers Order; where applicant is employed-no others. cd

Applicant states he has used name of Peter Chaunt for past fifteen years. cd

Absences from U. S.

Arrests, etc.

114

[fol. 114a]

IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT 2J IN EVIDENCE
Case No. 15907-WM
US vs. Chaunt
Clerk, U.S. District Court, Sou. Dist. of Calif.
/s/ P D HOOSER *Deputy Clerk*

(See Opposite) ☞

[fol. 115]

U. S. Department of Labor

Immigration and Naturalization Service

No. 2-705921

Certificate of Arrival 284604

I hereby certify that the immigration records show that the alien named below arrived at the port, on the date, and in the manner shown, and was lawfully admitted to the United States of America for permanent residence.

Name: Leitner, Ladislans

Port of entry: New York, N. Y.

Date: December 26, 1921

Manner of arrival: SS Carmania

I further certify that this certificate of arrival is issued under authority of, and in conformity with, the provisions of the Act of June 29, 1906, as amended, solely for the use of the alien herein named and only for naturalization purposes.

In Witness Whereof, this Certificate of Arrival is issued

April 18, 1940
(Date)

/s/ Byron Gebl
District Director of Immigration and Naturalization.

By /s/ Alan S. Chuman

[fol. 115a]

A True Copy

Attest

Dated May 20, 1955

/s/ PERCY G B GILKES
Clerk

By /s/ JOSEPH EAGIN
Deputy Clerk

[Seal
United States District Court
Eastern District of New York]

[fol. 116]

[Handwritten
W. F. Brown—Red—126, 5-7.]

ORIGINAL
(To be retained by clerk)

No. 284604

Nationality Hungarian

UNITED STATES OF AMERICA

PETITION FOR NATURALIZATION

AC

To the Honorable the U.S. District *Court of* Eastern District *at* Brooklyn, N.Y. the petition of PETER CHAUNT, hereby filed, respectfully shows:

(1) My place of residence is 3970—48th St., L.I. City, N.Y.

(2) My occupation is Office Clerk.

(3) I was born in Budapest, Hungary on August 15, 1899. My race is Magyar.

(4) I am ..... married. The name of my wife is Elvi.

(5) We were married on July 31, 1935 at Charleston, Mo.; she was born at Springfield, Mass. on Aug. 27, 1910; entered the United States at ..... on ..... for permanent residence therein, and now resides at 3970—48th St., L.I. City, N.Y.; was not naturalized on .... certificate No. ..... I have 1 children, and the name, date, and place of birth, and place of residence of each of said children are as follows: Mary, October 25, 1932, Chicago, ILL. She resides at 3970—48th St., L.I. City, N.Y.

(6) My last foreign residence was Budapest, Hungary. I emigrated to the United States of America from Rotterdam, Holland. My lawful entry for permanent residence in the United States was at New York, under the name of Ladislans Leitner on December 26, 1921, on the vessel

SS Carmania as shown by the certificate of my arrival attached hereto.

(7) I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom (which) at this time I am a subject (or citizen), and it is my intention to reside permanently in the United States.

(8) I am able to speak the English language.

(9) I have resided continuously in the United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since December 26, 1921 and in the County of Queens this State, continuously next preceding the date of this petition, since February 1, 1940. Petition filed under Sec. 2 Act of Sept. 22, 1922.

(10) I have not heretofore made petition for naturalization: No. ....., on As Ammended at ..... and such petition was denied by that Court for the following reasons and causes, to wit: .....

.....

and the cause of such denial has since been cured or removed.

Attached hereto and made a part of this, my petition for naturalization, are my certificate from the Department of Labor of my said arrival, and the affidavits of the two verifying witnesses required by law.

Wherefore, I, your petitioner, pray that I may be admitted a citizen of the United States of America, and that my name be changed to .....

I, PETER CHAUNT, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition was signed by me with my full, true name: SO HELP ME GOD.

/s/ PETER CHAUNT
(Complete and true signature of petitioner)

AFFIDAVITS OF WITNESSES

Serene Gati, occupation Housewife residing at 26 Edgewood Park, New Rochelle, N.Y., and Irving Eisner, occupation Factory Manager residing at 1141 President St., Brooklyn, N.Y. each being severally, duly, and respectively sworn, deposes and says: I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with PETER CHAUNT, the petitioner above mentioned, since December 1, 1925 and that to my personal knowledge the petitioner has resided in the United States continuously preceding the date of filing this petition, of which this affidavit is a part, to wit, since the date last mentioned and at Long Island City in the County of Queens this State, in which the above-entitled petition is made, continuously since February 1, 1940, and that I have personal knowledge that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief.

/s/ SERENE GATI
(Signature of witness)

/s/ IRVING EISNER
(Signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses in the respective forms of oath shown above in the office of Clerk of said Court at Brooklyn, N.Y. this 27 day of June, Anno Domini 1940. I hereby certify that Certificate of Arrival No. 2-705921 from the Department of Labor, showing the lawful entry for permanent residence of the petitioner above named has been by me filed with, attached to, and made a part of this petition on this date.

/s/ THOMAS MACPHERSON
Deputy

[SEAL]

GPO 16—9242

[fol. 116a]

A True Copy

Attest

Dated May 20, 1955

/s/ PERCY G. B. GILKES
Clerk

By /s/ JOSEPH EAGIN
Deputy Clerk

[Seal
United States District Court
Eastern District of New York]

[fol. 117]

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion so HELP ME GOD. In acknowledgment whereof I have hereunto affixed my signature.

/s/ PETER CHAUNT
(Signature of petitioner)

Sworn to in open court, this 28 day of November, A. D. 1940.

By /s/ (Illegible), *Deputy Clerk.*

NOTE.—In renunciation of title of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or titles) to order of nobility, which I have heretofore held."

Petition granted: Line No. ..... of List No. ..... and Certificate No. 4785200 issued.

Petition denied: List No. .....

Petition continued from ..... to .....
Reason .....

[*Stamp*
Admitted
Judge Moscowitz
List No.]

6165

[fol. 117a]

A True Copy

Attest

Dated May 20, 1955

/s/ PERCY G B GILKES
Clerk

By /s/ JOSEPH EAGIN
Deputy Clerk

[Seal
United States District Court
Eastern District of New York]

LODGED
Apr 12 1957
Clerk, U.S. District Court
Southern District
of California
By M. E. (Illegible)
Deputy Clerk

FILED
Apr 22 1957
Clerk, U.S. District Court
Southern District
of California
By C. A. SIMMONS
Deputy Clerk

DOCKETED AND ENTE
Apr 24 1957
Clerk, U.S. District Cour
Southern District
of California
By C. A. SIMMONS
Deputy Clerk

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Civil No. 15907-WM

UNITED STATES OF AMERICA, Plaintiff,

—v.—

PETER CHAUNT, Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

The above entitled matter came on regularly for trial on the 5th day of March, 1957, and continued thereafter on the 6th, 7th and 8th days of March, and was continued thereafter to April 1, 1957, and trial was completed on that date, in the above entitled court, before the Honorable William C. Mathes, Judge presiding, without a jury, the plaintiff, United States of America, being represented by Laughlin E. Waters, United States Attorney, Richard A. Lavine, Arline Martin and James R. Dooley, Assistant United States Attorneys, the defendant being represented by his attorneys, Margolis, McTernan and Branton and John W. Porter, and evidence both oral and documentary having been presented, and the matter having been tried on its merits, and the Court having heard the arguments of counsel, and being fully advised in the premises, and having on the 1st day of April, 1957, announced its findings [fol. 119] and opinions in open court, now makes its Findings of Fact, Conclusions of Law, and Judgment:

FINDINGS OF FACT

(First Cause of Action)

I

The plaintiff is a corporate sovereign, and this action is brought pursuant to the direction of the Attorney General

of the United States and under the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 (Public Law No. 414; 82nd Congress) [8 U.S.C.A. §1451 (a)].

II

The last known residence of the defendant is 4812 Glenalbyn Drive, Los Angeles, California, within the Southern District of California, Central Division, and within the jurisdiction of this Court.

III

On or about June 27, 1940, the defendant, Peter Chaunt, also known as Ladislans Leitner, and also known as Leslie Bela Leitner, who was then an alien and a native of Hungary, filed a Petition for Naturalization in the United States District Court for the Eastern District of New York.

IV

On or about November 28, 1940, the aforesaid petition was granted by said court, and on said date Certificate of Naturalization No. 4785200 was issued to the defendant.

V

There is clear, unequivocal and convincing evidence establishing beyond all reasonable doubt that the order admitting defendant to citizenship, and said certificate of naturalization, issued as aforesaid, were procured by the defendant from said court by knowing, intentional, deliber- [fol. 120] ate, designed, purposeful and willful concealment of material facts, in that defendant, in the proceedings which led to his naturalization, knowingly, intentionally, deliberately, designedly, purposely and willfully concealed the following material facts: (1) that prior to and at the time of filing said petition for naturalization and at the time of his naturalization, and subsequent thereto at least until the year 1952, defendant was an active member, officer and full-time paid functionary of the Communist Party of the United States and had been since on or about the year 1929; (2) that prior to said naturalization the de-

fendant had been arrested and charged with violation of the city ordinances of the City of New Hav n, Connecticut as follows: (a) On or about July 30, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729." Disposition, "Plea—not guilty—Discharged"; (b) On or about December 21, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harrangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances." Disposition, "Demurrer filed 12-27-29. Demurrer overruled—Whitaker 12-27-28, plea—not guilty, Found J.S."; (c) that on the 11th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he "did commit, violate, Peter Chaunt, general breach of peace"; "plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed"; (d) that during the five years immediately pre- [fol. 121] ceding the date of defendant's petition for naturalization defendant was not and did not behave as, a person of good moral character by reason among other facts of the facts as herein alleged and the concealment thereof, as herein alleged, in violation of the fourth subdivision of Section 4 of said Naturalization Act of 1906, as amended.

VI

The facts so concealed, as alleged in paragraph V hereof, are material for the reason that they violate the requirements for naturalization as provided by the Nationality Act of 1906, as amended; and for the further reason that as a result of said concealment, the Immigration and Naturalization Service and the court was foreclosed from making a further investigation as to whether or not defendant subscribed to the principles of the Communist Party or whether

defendant was, or had behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; or whether or not defendant could in open court take oath of allegiance to the United States without any mental reservation or purpose of evasion, as required by Section 4, subdivision 3, of the Nationality Act of 1906, as amended, and by Rule 8(c) of the Rules and Regulations of the Immigration and Naturalization Service; and, as a result of said concealment, said Immigration and Naturalization Service did not make a full and proper investigation as to whether defendant had all of the qualifications for citizenship, including defendant's good moral character during the statutory period preceding naturalization, as required by the Nationality Act of 1906, as amended; and as a result thereof said Immigration and Naturalization Service made a recommendation to the court that said Petition for Naturalization be granted, and said court granted said Petition for Naturalization.

[fol. 122]

VII

Before the filing of this Amended Complaint, an affidavit was executed by Maurice A. Roberts, an attorney of the Immigration and Naturalization Service, United States Department of Justice, showing good and sufficient cause for the institution of this proceeding under, and as required by, the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 [8 U.S.C.A., 1451(a)], to set aside and cancel the naturalization of said defendant, Peter Chaunt, as having been procured by concealment of material facts and by willful misrepresentation; a copy of said affidavit was attached to the original Complaint herein and to the Second Amended Complaint herein, on which the action was tried, marked EXHIBIT "A", and the original of said affidavit was introduced in evidence as Plaintiff's Exhibit 36.

Findings of Fact

(Second Cause of Action)

I

The plaintiff is a corporate sovereign, and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 (Public Law No. 414; 82nd Congress) [8 U.S.C. §1451 (a)].

II

The last known residence of the defendant is 4812 Glenalbyn Drive, Los Angeles, California, within the Southern District of California, Central Division, and within the jurisdiction of this Court.

III

On or about June 27, 1940, the defendant, Peter Chaunt, also known as Ladislans Leitner, and also known as Leslie [fol. 123] Bela Leitner, who was then an alien and a native of Hungary, filed a Petition for Naturalization in the United States District Court for the Eastern District of New York.

IV

On or about November 28, 1940, the aforesaid petition was granted by said court, and on said date Certificate of Naturalization No. 4785200 was issued to the defendant.

V

The evidence is clear, unequivocal and convincing, and establishes beyond all reasonable doubt, that said order admitting defendant to citizenship and said Certificate of Naturalization were procured by defendant by affirmative, fraudulent and willful misrepresentation, in that the defendant in the proceedings which lead to his naturalization (1) intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order", and no others; and in answer to an oral question propounded by Reuben

E. Wilson, Naturalization Examiner, as follows: "Do you believe in Communism, Fascism or Nazism?" defendant intentionally and falsely answered "No"; whereas, in truth and in fact, the defendant, from on or about the year 1926, had been an active member and officer of the Communist Party of the United States; (2) intentionally and falsely represented that during the five years immediately preceding the date of his Petition for Naturalization defendant was, and behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and intentionally and falsely represented that it was the defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, estate or sovereignty, and that it was his intention to bear true faith and allegiance to the United States of America and to support and defend the Constitution and laws of the [fol. 124] United States of America against all enemies, foreign and domestic; whereas, in truth and in fact, by reason of defendant's membership in, and his knowledge of the nature and principles of the Communist Party, the defendant was not, and had not behaved as, a person attached to the principles of the Constitution of the United States or well disposed to the good order and happiness of the United States, and it was not defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and it was not his intention to bear true faith and allegiance to the United States of America or to support or defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; (3) intentionally and falsely represented that prior to said naturalization he had never been arrested or charged with violation of any law of the United States or state or any city ordinance or traffic regulation, whereas in truth and in fact defendant had been arrested and charged with violation of the city ordinances of the City of New Haven, Connecticut, as follows: (a) On or about July 30, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil ex-

ample, and contrary to the ordinance in such case made and provided. Ord. 729." Disposition, "Plea—not guilty—Discharged"; (b) On or about December 21, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, temporarily of said city and town did make an oration, harrangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances." Disposition, "Demurrer filed 2-27-29. Demurrer overruled—Whitaker 12-27-28, plea—not guilty, Found J.S."; (c) That on the 11th day of [fol. 125] March, 1930, defendant was arrested and charged at said city and town of New Haven that he "did commit, violate, Peter Chaunt, general breach of the peace"; "plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed"; (d) Intentionally and falsely represented that during the five years immediately preceding date of defendant's Petition for Naturalization he was and had behaved as a person of good moral character, whereas, in truth and in fact, among other things, by reason of the intentional and false misrepresentations as herein alleged, defendant was not and had not behaved as a person of good moral character during said period.

VI

The evidence is clear, unequivocal and convincing, and establishes beyond all reasonable doubt that the Communist Party of the United States is an organization which at all times since 1926, as the said Peter Chaunt well knew, advised, advocated and taught the necessity and the duty to overthrow by force and violence the government of the United States; wrote, circulated, distributed, printed, published and displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated and taught the performance of the acts described hereinabove in this paragraph; and promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet [fol. 126] Socialist Republics.

VII

The evidence is clear, unequivocal and convincing, and establishes beyond all reasonable doubt that at all of the times above mentioned, as the said Peter Chaunt well knew, the Communist Party of the United States was a section of an international organization called "The Communist International", and that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

VIII

The evidence is clear, unequivocal and convincing, and establishes beyond all reasonable doubt, that at all times above mentioned the defendant was attached to the principles of Marxism, Leninism, Stalinism and the Communist International, and the Communist Party of the United States, including the objective of overthrowing the government of the United States of America by force and violence at the earliest time circumstances permit; and during all of the times above mentioned defendant felt and owed his entire loyalty and allegiance to the Communist Party, the Communist International and the Union of Soviet Socialist Republics; and at the time the defendant took the oath of renunciation and allegiance, as required by law in order to become a naturalized citizen of the United States of America, the defendant had no intention of renouncing his allegiance to Soviet Russia or to his native Hungary, and had no intention of giving any of his allegiance to the United States of America.

IX

As the result of the affirmative, fraudulent, intentional and willful misrepresentations by the defendant, as above [fol. 127] found, the Immigration and Naturalization Service and the court were foreclosed from making any further investigation or any investigation which would have revealed the defendant's record of arrests, his Communist Party membership, and his poor moral character; and as a

result of said misrepresentations the Immigration and Naturalization Service and the court did not make a further investigation as to whether defendant had all of the qualifications for citizenship required by the Nationality Act of 1906, as amended; and as a result thereof said Immigration and Naturalization Service made a recommendation to the court that said Petition for Naturalization be granted, and said court granted said Petition for Naturalization.

X

Before the filing of this Amended Complaint, an affidavit was executed by Maurice A. Roberts, an attorney of the Immigration and Naturalization Service, United States Department of Justice, showing good and sufficient cause for the institution of this proceeding under, and as required by, the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. 1451(a)] to set aside and cancel the naturalization of said defendant, Peter Chaunt, as having been procured by concealment of material facts and by willful misrepresentation; a copy of said affidavit was attached to the original Complaint herein and to the Second Amended Complaint herein, on which the action was tried, marked EXHIBIT "A", and the original of said affidavit was introduced in evidence as Plaintiff's Exhibit 36.

CONCLUSIONS OF LAW

I

This Court has jurisdiction of plaintiff's First and Second Causes of Action as alleged in plaintiff's Second Amended [fol. 128] Complaint under the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 [8 U.S.C. 1451(a)].

II

The naturalization of the defendant was procured by concealment of material facts within the meaning of Section 340(a) of the Immigration and Nationality Act of 1952.

III

The naturalization of the defendant was procured by willful misrepresentation within the meaning of Section 340(a) of the Immigration and Nationality Act of 1952.

IV

The order of the United States District Court for the Eastern District of New York at Brooklyn New York, dated November 28, 1940, admitting the defendant to citizenship, and the Certificate of Naturalization No. 4785200 issued by said court on the 28th day of November, 1940, were procured by concealment of material facts and by willful misrepresentations and the naturalization of the defendant was induced by the defendant's fraud and said naturalization is therefore rendered nugatory by the defendant's fraud.

V

The allegations contained in both the First and Second Causes of Action of plaintiff's Second Amended Complaint have been sustained, as hereinabove found, by unequivocal, clear and convincing evidence beyond all reasonable doubt, and the prayer of said Second Amended Complaint should be granted and judgment in favor of the plaintiff and against the defendant as prayed for in said Second Amended Complaint should be entered accordingly, adjudging that the order of the court admitting defendant to citizenship be revoked and set aside; that all official documents evidencing citizenship be cancelled; that upon this judgment becoming final the defendant shall be re-
[fol. 129] quired to surrender and deliver up his Certificate of Naturalization No. 478522 to the Clerk of the Court for cancellation; and that defendant be forever restrained and enjoined from setting up or claiming any rights, privileges or advantages whatsoever under said order or under any official document evidencing citizenship issued by virtue of the aforesaid order.

JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law herein,

It Is Hereby Ordered, Adjudged and Decreed:

1. That the order of the United States District Court for the Eastern District of New York at Brooklyn, New York, made on November 28, 1950, admitting the defendant, Peter Chaunt, to citizenship of United States of America, be and the same is hereby revoked, set aside and cancelled.

2. The Certificate of Naturalization No. 4785200 issued to the defendant, Peter Chaunt, by the Clerk of the United States District Court for the Eastern District of New York at Brooklyn, New York, be and the same is hereby revoked, set aside and cancelled.

3. That a certified copy of this Judgment shall be transmitted by the Clerk of this Court to the United States District Court for the Eastern District of New York at Brooklyn, New York, which originally issued the said Certificate of Naturalization, and the Clerk of the said United States District Court for the Eastern District of New York, upon receipt of the said certified copy of this Judgment, shall enter the same of record and cancel said original certificate of naturalization upon the records of said court and notify the Attorney General of the entry of such order and of such cancellation.

[fol. 130] 4. That upon this judgment becoming final the defendant, Peter Chaunt, shall surrender his copy of said Certificate of Naturalization No. 4785200 to the Clerk of this Court for cancellation.

5. That the defendant, Peter Chaunt, upon this judgment becoming final, shall be thereafter enjoined from claiming or exercising any rights or privileges of citizenship granted by said Certificate of Naturalization No. 4785200 or said order admitting said defendant, Peter Chaunt, to citizenship.

Dated: April 20, 1957.

Wm. C. Mathes, United States District Judge.

[fol. 131]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 15,843

PETER CHAUNT, Defendant-Appellant,

vs.

UNITED STATES OF AMERICA, Plaintiff-Appellee.

Appeal from the United States District Court
for the Southern District of California,
Central Division

OPINION—September 22, 1959

Before: Stephens, Maris and Barnes, Circuit Judges

MARIS, Circuit Judge:

The defendant, Peter Chaunt, appeals from a judgment entered in the District Court for the Southern District of California which revoked a prior order admitting him to citizenship and cancelled his certificate of naturalization on the grounds that his naturalization had been procured by concealment of material facts and by willful misrepresentations. The record, which consists largely of testimony and documents offered by the Government, discloses the following pertinent facts:

The defendant, a native of Hungary, came to the United States in 1921 at the age of 22. During 1928 he worked on a Hungarian Communist daily paper, Uj Elore, and with the Young Communist League in Akron, Ohio. In 1929 and 1930 he had been arrested three times in the City of New Haven, Connecticut, charged in the first two instances with the violation of city ordinances and in the third with a general breach of the peace.

During 1930 and 1931 his name appeared in the Daily Worker in connection with some of his activities. On June

21, 1930 an article entitled, "For Offensive Strategy, by Peter Chaunt, District Organizer, District 15", appeared in the Daily Worker. In 1931 he taught the subject "Lenin-[fol. 132] ism" at a Communist training school in Ontario, Canada. From 1930 to 1940 he acted as District Organizer for the Communist Party in certain districts located in Connecticut, New York and Missouri. Also, during some of those years he attended conventions and meetings of the Communist Party.

In November 1939 the defendant filed an application for a certificate of arrival and a preliminary for[illegible] for petition for naturalization with the Immigration and Naturalization Service in New York. He was orally examined under oath on June 27, 1940 by two examiners of the Immigration and Naturalization Service as to the questions and answers appearing on his petition, as well as on supplementary questions. His formal petition for naturalization was thereupon filed in the United States District Court for the Eastern District of New York. The petition was granted and the defendant was naturalized on November 28, 1940. Thirteen years later the Government brought the present action for defendant's denaturalization under § 340(a) of the Immigration and Naturalization Act of 1952, 8 U.S. C.A. § 1451(a), charging that, in answering the questions propounded to him, the defendant had concealed material facts and had made willful misrepresentations.

The gravamen of the amended complaint was that prior to and at the time of naturalization the defendant intentionally concealed the facts that he was an active member and officer of the Communist Party, and that he had been arrested, and intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order", that he was attached to the principles of the Constitution and well disposed to the good order and happiness of the United States, and that he had never been arrested, whereas in fact he was a member and officer of the Communist Party and by reason thereof and of his knowledge of the nature and principles of that Party was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States, and had been arrested three times. The amended complaint further asserted that

as a result of these concealments and misrepresentations the Immigration and Naturalization Service did not make a further investigation as to whether the defendant for five years immediately preceding his application had behaved [fol. 133] as a person of good moral character attached to the principles of the Constitution and well disposed to the good order and happiness of the United States and whether he could take the oath of allegiance without mental reservation or purpose of evasion, all as required by section 4 of the Immigration and Nationality Act of 1906, 34 Stat. 596. The district court found that the evidence supported the claims made by the Government and entered judgment revoking the order admitting defendant to citizenship and cancelling Certificate of Naturalization No. 4785200. This appeal followed.

The defendant contends that the findings of the district court must be set aside as erroneous and that, in any event, the issues are res judicata between him and the Government. In reviewing the findings of the district court in denaturalization cases we must scrutinize the record with utmost care to determine whether the Government had carried its burden of proving by "clear, unequivocal, and convincing" evidence, which does not leave "the issue in doubt", that the citizen who is sought to be returned to the status of an alien obtained his naturalization certificate illegally. Schneiderman v. United States, 1943, 320 U.S. 118, 158; Baumgartner v. United States, 1944, 322 U.S. 665, 670; Knauer v. United States, 1946, 328 U.S. 654, 657-658; Nowak v. United States, 1958, 356 U.S. 660, 663; Maisenberg v. United States, 1958, 356 U.S. 670.

We consider first the defendant's contention that the district court erred in finding that he intentionally concealed the fact of his arrests and willfully misrepresented that he had never been arrested. In his preliminary form for petition for naturalization the defendant answered "no" to Question 30: "Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?" The defendant does not contend that this question is ambiguous. The Government called as a witness Calvin Derrenger, the naturalization examiner who conducted the preliminary ex-

amination of the defendant, who testified, inter alia, that it was his custom and practice, as well as duty under the regulations of the Immigration and Naturalization Service, to cover thoroughly the question of arrests. He identified various marks which appeared on the defendant's preliminary form for petition for naturalization. In respect to the initials "RE" he testified: "They mean that the petitioner could read English. I tested him on that and found [fol. 134] he could read English". As to the initials "NCR" he stated: "They mean that I asked the petitioner if he had any record of arrests anywhere and his answer was that he had none, and the 'NCR' stands for no criminal record anywhere". This testimony was undisputed.

The district court found that prior to his naturalization "(a) On or about July 30, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729.' Disposition, 'Plea—not guilty—Discharged'; (b) On or about December 21, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances'. Disposition, 'Demurrer filed 12-27-29. Demurrer overruled—Whitaker 12-27-29, plea—not guilty, Found J.S.';" and "(c) that on the 11th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he 'did commit, violate, Peter Chaunt, general breach of peace'; 'plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed'". It appears that upon the appeal the defendant pleaded not guilty and the case was "nolled" by the Court of Common Pleas.

The district court found that the defendant's failure to disclose his record of arrests was an intentional concealment of a material fact and a willful misrepresentation which foreclosed the Immigration and Naturalization Ser-

vice and the district court from making a further investigation as to whether he had all the qualifications for citizenship required by the Act of 1906, as a result of which the Service recommended and the district court granted his petition for naturalization. We think that these findings are amply supported.

It has been held that concealment of arrests, revelation of which might have led the Immigration and Naturalization Service to make further investigation of the petitioner, is sufficient ground upon which to base a decree of denaturali- [fol. 135] zation Del Guercio v. Pvrko, 9 Cir. 1947, 160 F. 2d 799; United States v. Corrado, E.D. Mich. 1953, 121 F. Supp. 75, aff. 6 Cir. 1955, 227 F. 2d 780, cert. den. 351 U.S. 925; United States v. Accardo, D.C.N.J. 1953, 113 F. Supp. 783, aff. 3 Cir. 1953, 208 F. 2d 632, cert. den. 347 U.S. 952; Stacher v. United States, 9 Cir. 1958, 258 F. 2d 112, cert. den. 358 U.S. 907; United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757.

Naturalization is a great privilege and one which once granted cannot lightly be taken away. But when granting the right the Government is entitled to frank, honest and unequivocal answers from the petitioner for citizenship to the questions put to him to throw light upon his qualifications or lack of them. And so the defendant here had a duty to answer honestly and fully the questions propounded to him. As stated by the district court in United States v. Corrado, E.D. Mich. 1953, 121 F. Supp. 75, 78, 6 Cir. 1955, 227 F. 2d 780, cert. den. 351 U.S. 925: "If he had revealed that he had been arrested it does not necessarily follow that he would have been denied citizenship, but this was information that the examining officers were charged by law with obtaining and to which they were entitled. The seriousness of the offense and the materiality of any arrest or conviction would be then up to the examining officers, and if they wrongfully refused petitioner naturalization he could then appeal to the courts." It was not necessary for the district court to determine whether, upon further inquiry prompted by knowledge of the defendant's arrests, he would have been found ineligible for citizenship. For the test of the materiality of such a concealment and misrepresentation of facts "is not whether naturalization would

have been refused if defendant had revealed the truth, but whether, by his false answers, the government was denied the opportunity of investigating the facts relating to his eligibility." United States v. Chandler, D.C. Md. 1957, 152 F. Supp. 169, 177.

The defendant, however, contends that the findings of the district court must be set aside because there is no finding that any of the arrests were valid. For this proposition he relies upon United States v. Kessler, 3 Cir. 1954, 213 F. 2d 53. His reliance upon the Kessler case is misplaced. For in that case the Court of Appeals for the Third Circuit concluded, as that court pointed out in United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757, 760, that there had not been an untruthful answer given to the question [fol. 136] concerning arrests, and so no fraud had been committed. That conclusion was based upon the fact that the arrests alleged were false arrests without color of right for an offense unknown to the law and which it was, therefore, not the duty of the applicant to report.

In the present case, however, all three arrests were for offenses known to the law, the first two for the violation of specified New Haven ordinances and the third for a breach of the peace, an offense known at common law. The defendant urges that the first two arrests were for the violation of ordinances which on their face are unconstitutional so that the failure to report them could not have been a material concealment or misrepresentation. It is possible that the ordinances in question were sought to be enforced against the defendant in violation of his constitutional rights. But neither the text of the ordinances nor the circumstances under which the arrests were made were before the district court. Nor was it necessary that they should be. For the court was not called upon to determine the propriety of the arrests or the guilt of the defendant. Whether the arrests were proper and, if so, the extent of their bearing upon the defendant's qualifications for citizenship were questions which the Immigration and Naturalization Service and the District Court for the Eastern District of New York were entitled to consider in the proceeding for defendant's naturalization. That consideration was blocked by the defendant through his concealment of them.

Moreover the third arrest, that for "general breach of the peace" is not subject to the constitutional attack which the defendant levels against the other two. The failure to disclose it alone would be sufficient to sustain the judgment of the district court. For it is not the number of arrests, nor the character of the offenses, which is the important factor. It is the concealment of any material fact sought to be inquired into, including any arrest, which is the fraudulent act and which justifies not only the finding of fraud, but also the finding which the district court here made, that the defendant had not been of good moral character for a period of five years immediately preceding his application and thus did not meet the statutory prerequisite to citizenship. Del Guercio v. Pupko, 9 Cir. 1947, 160 F. 2d 799; United States v. Umantes, D.C. Cal. 1955, 139 F. Supp. 574, [fol. 137] aff. 9 Cir. 1956, 232 F. 2d 216; United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757.

In the absence of any explanation by the defendant of his answer of "No" to the question in respect to arrests, we find that the record fully justifies the finding of the district court that he deliberately concealed his arrests and falsely represented that he had never been arrested. Since these findings furnish ample support for the judgment revoking the defendant's naturalization it is unnecessary for us to consider whether, as the defendant urges, the findings of the district court as to his concealment of his membership in the Communist Party and as to his lack of attachment to the principles of the Constitution and his disposition toward the good order of the United States can stand in the light of the decisions of the Supreme Court in Nowak v. United States, 1958, 356 U.S. 660, and Maisenberg v. United States, 1958, 356 U.S. 670, which were handed down after the district court entered its judgment in this case.

We come then to the defendant's final argument that the issues sought to be raised by the Government in this case were concluded by the order of the district court which admitted him to citizenship and are res judicata in this proceeding. As to this it is sufficient to say that the overwhelming weight of authority is to the effect that, at least in the case of an order of naturalization procured, as in this case,

ex parte without an actual contested litigation of the issues, the issues as to concealment of material facts and willful misrepresentations in the procurement of the order of naturalization are open in a subsequent suit by the United States for the revocation of the order and the cancellation of the certificate of naturalization. Tutun v. United States, 1926, 270 U.S. 568, 579; Baumgartner v. United States, 1944, 322 U.S. 665, 672; Knauer v. United States, 1946, 328 U.S. 654; Stacher v. United States, 9 Cir. 1958, 258 F. 2d 112, 119-120, cert. den. 358 U.S. 907.

The judgment of the district court will be affirmed.

[File endorsement omitted]

[fol. 138]

IN UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15843

PETER CHAUNT, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court
for the Southern District of California,
Central Division.

JUDGMENT—Filed and Entered: September 22, 1959

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

[File endorsement omitted]

[fol. 139] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 140]

SUPREME COURT OF THE UNITED STATES

No. 59—October Term, 1959

PETER CHAUNT, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—February 29, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Supreme Court, U.S.
FILED
DEC 16 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 503 22

PETER CHAUNT, *Petitioner*,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

PETER CHAUNT, *Petitioner*,

v.

UNITED STATES OF AMERICA,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Peter Chaunt petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit which affirmed a judgment of the United States District Court for the Southern District of California revoking petitioner's naturalization.

OPINION BELOW

The opinion below (X R. 3) is reported in 270 F. 2d 179, and also appears in Appendix C of this petition.

JURISDICTION

The judgment below was entered on September 22, 1959 (X R. 10; Appendix B herein). Jurisdiction of this Court exists under 28 U. S. Code 1254(1).

QUESTIONS PRESENTED

1. Whether a denaturalization judgment may be based on a ground not alluded to in the affidavit of good cause, the filing of which is required by the denaturalization statute as a prerequisite to the filing and maintenance of the action.

2. Whether denaturalization may validly be predicated on concealment in naturalization proceedings of an arrest record, without regard to whether (a) disclosure of the arrests would not have prevented naturalization, (b) the arrests occurred years before the statutory period of good-behavior for eligibility of citizenship, (c) the arrests did not result in convictions, and (d) the arrests were under ordinances which violated the First Amendment.

STATUTE INVOLVED.

Section 340(a) of the Immigration and Nationality Act, 66 Stat. 163, 260, as amended by an Act of September 3, 1954, 68 Stat. 1232, 8 U. S. C. 1451,[1] provides, in part, as follows:

> "It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title [sec. 1421 of 8 U.S.C.] in the judicial district in which the naturalized

[1] The amendment substituted "United States attorneys" for "United States district attorneys" in the quoted excerpt.

citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively . . . ."

STATEMENT OF THE CASE

Petitioner, a native of Hungary, came to the United States in 1921 at the age of 22 (X R. 3). In November 1939, he filed his preliminary form for petition for naturalization. He was orally examined on June 27, 1940, by examiners of the Immigration and Naturalization Service. Thereafter he filed his formal petition for naturalization in the United States District Court for the Eastern District of New York. He was naturalized by that court on November 28, 1940. (X R. 4.)

Thirteen years later, the government instituted suit to revoke petitioner's citizenship under section 340(a) of the Immigration and Nationality Act, on the statutory grounds that the naturalization had been procured by concealment and willful misrepresentation of material facts (X R. 4; I R. 2).[2]

A copy of the affidavit of good cause, required by the statute, was attached to the original complaint,

[2] Statutory authority for revocation of naturalization procured by fraud has continually existed since 1906. See sec. 15, Act of June 29, 1906, 34 Stat. 601, superseded by section 338 of the Nationality Act of 1940, 54 Stat. 1158, which in turn was superseded by section 340 of the Immigration and Nationality Act.

as well as to the second amended complaint on which the case was tried (III R. 570; I R. 8, 189). The affidavit, admitted at the trial as Plaintiff's Exhibit 36A (V R. 100), is printed in Appendix A of this petition.

The affidavit alleged that in the proceedings which led to his naturalization petitioner had (1) stated that he had never belonged to any Communist organization, whereas in fact he had been a member of the Communist Party, and (2) made false representations about his belief in the United States form of government, his attachment to the principles of the Constitution, and his intention to renounce foreign allegiance and to bear allegiance to the United States (P. Ex. 36A).

The complaint made similar allegations. In addition, it alleged that petitioner had procured naturalization by concealing and misrepresenting a record of arrests. (I R. 180-89.) The affidavit of good cause contained no reference to arrests or to concealment or misrepresentation of arrests.

After trial, the District Court entered judgment canceling petitioner's naturalization, on findings that he had procured naturalization by concealments and misrepresentations of the three matters alleged in the complaint—i.e., arrests, Communist Party membership, and his political opinions and allegiance (III R. 561-73).

The Court of Appeals affirmed solely on the ground that the evidence sustained the findings of concealment and misrepresentation of arrests (X R. 3-9). It did not reach the other findings of the District Court, stating (X R. 7): "Since these findings [on the arrests] furnish ample support for the judgment revoking the defendant's naturalization it is unnecessary

for us to consider whether, as the defendant urges, the findings of the district court as to his concealment of his membership in the Communist Party and as to his lack of attachment to the principles of the Constitution and his disposition toward the good order of the United States can stand in the light of the decisions of the Supreme Court in Nowak v. United States, 1958, 356 U.S. 660, and Maisenberg v. United States, 1958, 356 U.S. 670, which were handed down after the district court entered its judgment in this case."

As a result, petitioner's denaturalization was sustained solely on a ground—concealment and misrepresentation of an arrest record—which is not alluded to in the affidavit of good cause, executed to satisfy the statutory prerequisite to institution of a denaturalization action.[3]

On the subject of the arrests, both the court below and the District Court found that petitioner had answered "No" to the following question on the preliminary form for petition for naturalization: "Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?" (X R. 5; III R. 567). The court below also accepted testimony of the naturalization examiner that his mark "NCR" on the preliminary form meant that he had asked petitioner if he had had any record of arrests, and petitioner had answered none (X R. 6; V R. 23).

---

[3] Since the court below did not pass on the grounds for denaturalization other than the arrests, this petition is not addressed to those other grounds. Should the Court grant certiorari and reverse, the appropriate action would be to remand to the Court of Appeals for disposition of the remaining grounds on which the District Court acted.

Both courts found that petitioner had the following record of arrests and dispositions prior to his naturalization:

(1) "On or about July 30, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit, Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729.' Disposition: 'Plea—not guilty—Discharged.'"

(2) "On or about December 21, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harangue, or other public demonstration in New Haven Green outside of the churches. Pages 609 Charter and Ordinances.' Disposition, 'Demurrer filed 12-27-29. Demurrer overruled—Whitaker 12-27-29, plea—not guilty, Found J. S.'"

(3) On "the 11th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he 'did commit, violate, Peter Chaunt, general breach of peace;' 'plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed.'" The Court of Appeals added: "It appears that upon the appeal the defendant pleaded not guilty and the case was 'nolled' by the Court of Common Pleas." (X R. 6; III R. 567-68.)

The District Court found that *all* the misrepresentations included in its findings had collectively foreclosed the Immigration and Nationalization Service and the naturalizing court from making further investigation into petitioner's eligibility for citizenship (III R. 569-

70). The Court of Appeals inaccurately translated this into a finding by the District Court that the petitioner's failure to disclose his record of arrests had *by itself* foreclosed further investigation. It then held that this translated "finding" was "amply supported." (X R. 6.)

The court below ruled that concealment of arrests is per se a material circumstance without regard to whether disclosure of the arrests would have resulted in refusal of naturalization. It stated (X R. 7):

> "It was not necessary for the district court to determine whether, upon further inquiry prompted by knowledge of the defendant's arrests, he would have been found ineligible for citizenship. For the test of the materiality of such a concealment and misrepresentation of facts 'is not whether naturalization would have been refused if defendant had revealed the truth, but whether, by his false answers, the government was denied the opportunity of investigating the facts relating to his eligibility.' United States v. Chandler, D. C. Md. 1957, 152 F. Supp. 169, 177."

The court recognized the possibility that the New Haven ordinances involved in the first two arrests may have been "sought to be enforced against the defendant in violation of his constitutional rights." However, it held that the District Court was not called upon to inquire into this possibility, and that it was immaterial whether the arrests were proper or improper. (X R. 8.)

REASONS FOR ALLOWING THE WRIT

1. The Affidavit Question

The court below sustained the cancellation of petitioner's citizenship solely on the ground that petitioner had concealed and misrepresented his arrests. Yet the affidavit of good cause, required by the statute, contains not a word or intimation regarding arrests or concealment or misrepresentation of arrests; it deals exclusively with other claimed grounds for revocation.

United States v. *Zucca*, 351 U.S. 91, held that the filing of the affidavit of good cause is a prerequisite to the initiation and maintenance of a denaturalization suit. *Nowak* v. *United States*, 356 U.S. 669, held that such an affidavit "satisfied the purpose of § 338(a) to protect those proceeded against from ill-considered action," only because, "In substance the affidavit set forth the same matters upon which the District Court's later decree of denaturalization was based, and showed with adequate particularity the grounds on which the Government's suit rested" (at 662).

Furthermore, the filing of a sufficient affidavit is a jurisdictional or quasi-jurisdictional prerequisite. This appears from the facts that failure to file the affidavit with the complaint cannot be cured by a later filing and also prevents coercion of testimony by deposition. *Matles* v. *United States* and companion cases, 356 U.S. 256.

Since the denaturalization decree here was sustained solely on a ground not mentioned in the affidavit of good cause, the judgment below violates the statute and contradicts this Court's decisions in *Zucca*, *Nowak* and *Matles*.

2. The Materiality Question

The court below has read the requirement of materiality out of the denaturalization act, at least where arrests are concerned. This contravenes the statute, which authorizes denaturalization not for any concealment or misrepresentation made in the naturalization proceeding, but only for those which "procured" the naturalization. Cf. *United States* v. *Anastasio*, 226 F. 2d 912, cert. den., 351 U.S. 931 (misrepresentation of an arrest record does not support denaturalization where the true facts were known to the government at the time of naturalization).

The three arrests which petitioner concealed had occurred about ten years before his initial application for naturalization. The naturalization statute said nothing about arrests and required good moral character for only five years immediately preceding the petition for naturalization.[4]

In the case of one of the arrests, petitioner was discharged. In the case of another, the charge was "nolled" on appeal. The disposition of the third arrest is unclear, the record containing only the unexplained notation "Found J. S.", without any indication of a sentence.

Two of the arrests, including the one of unknown disposition, were for violations of city ordinances which quite clearly were unconstitutional on their face—being, respectively, for distributing handbills and for making a speech "outside of the churches." Cf. *Lovell*

[4] Sec. 4, subd. Fourth, of the Naturalization Act of June 29, 1906, as amended by Act of March 2, 1929 (34 Stat. 598, as amended by 45 Stat. 1513). The superseding Nationality Act of 1940 did not become effective until January 13, 1941. 54 Stat. 1174.

v. *Griffin*, 303 U.S. 451; *Jamison* v. *Texas*, 318 U.S. 413; *Hague* v. *C.I.O.*, 307 U.S. 496; *Schneider* v. *Irvington*, 308 U.S. 147; *Niemotko* v. *Maryland*, 340 U.S. 268. The third arrest, for "general breach of peace," originally evoked a fine of only $25.00, and the case was thereafter "nolled" on appeal.

The court below disregarded all these indications that the arrests were inconsequential. It laid down an untenable rule of law that denaturalization automatically attends the concealment of any arrests, no matter how remote, for whatever trivial offense, whether under an unconstitutional ordinance, regardless of the disposition of the charge, and though disclosure of the arrests would not have resulted in denial of naturalization. (See *supra*, p. 7.)

The court held that petitioner's concealment of the arrests had foreclosed further investigation into his qualifications for citizenship. This conclusion was based on a misreading of the District Court's findings (*supra*, pp. 6-7.) But even if it were true, it would be immaterial without some showing—of which there was none—that the further investigation might reasonably have led to denial of naturalization. "We have found no decision and none has been cited to us where citizenship has been revoked for failure to disclose facts the revelation of which would not have justified refusal of citizenship in the first place." *United States* v. *Kessler*, 213 F. 2d 53, 58, ftn. 9.

The dilution below of the statute's materiality requirement is particularly unfortunate because of the absence of any statute of limitations and, apparently, of any rule of laches in denaturalization cases. The result here is that petitioner has been denaturalized

in an action commenced thirteen years after naturalization on account of concealment of three thoroughly inconsequential arrests, at least two of which represented violations of his First Amendment right.

The decision in this case and the standards applied are basically inconsistent with the Third Circuit's decisions in *United States* v. *Kessler* and *United States* v. *Anastasio,* both *supra,* which stand for the proposition that denaturalization may not be based on misrepresentations of arrests the disclosure of which would not have warranted denial of naturalization. And contrary to the holding in this case that it did not matter whether the arrests were for unconstitutional offenses, *Kessler* holds that denaturalization may not be based on a non-disclosure of illegal arrests.

Naturalization is accomplished by a formal judgment entered in a proceeding in which the government is a party and has a right of appeal. It is hard to believe that Congress intended naturalization judgments to be less stable than other civil judgments. Other final judgments, however, cannot be set aside merely because false or perjured testimony was involved. The fraud must also have had the effect of foreclosing a meritorious claim or defense. See Restatement, Judgments (1942) secs. 118, 121, 126(2)(b). This principle is contrary to the holding below that it was immaterial that disclosure of petitioner's arrests would not have prevented his naturalization.

CONCLUSION

Certiorari should be granted, and the judgment below reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

Appendix A—The Affidavit of Good Cause (P. Ex. 36A)

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA } ss. C-4785200

Maurice A. Roberts, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That PETER CHAUNT filed a petition for naturalization in the United States District Court for the Eastern District of New York on June 27, 1940 and was admitted to citizenship by that court on November 28, 1950, receiving naturalization certificate No. 4785200.

(b) That in the proceedings which led to his naturalization, the said PETER CHAUNT alleged under oath:

(I) That he had never belonged to any Communist, Nazi or Fascist organization and that the only organization to which he had ever belonged was the fraternal benefit society of International Workers Order.

(II) That he fully believed in the form of government of the United States; and that he did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that it was his intention to renounce absolutely and forever all allegiances and fidelity to any foreign prince, potentate, state, or sovereignty of which he was a subject or citizen.

(IV) That he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that he would bear true faith and allegiance to the same; and that he took this obligation freely without any mental reservation or purpose of evasion.

(c) That the allegations of said PETER CHAUNT as set forth in subparagraph 1 (b) were false and untrue.

(d) That the said PETER CHAUNT has been an active member and officer of the Communist Party of the United States, including the Workers (Communist) Party and other organizations affiliated with or controlled by the Communist Party of the United States, since at least 1926.

(e) That the Communist Party of the United States is an organization which at all times since 1926, as the said PETER CHAUNT well knew:

(I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

(II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(III) Advised, advocated, or taught the unlawful damage, injury or destruction of property;

(IV) Advised, advocated, or taught sabotage;

(V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised,

advocated, or taught the performance of the acts described in subparagraphs 1(e), I, II, III and IV.

(VI) Promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialistic Republics.

(f) That at all of the times above mentioned, as the said PETER CHAUNT well knew, the Communist Party of the United States was a section of the international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That by reason of the foregoing, the said PETER CHAUNT at the time he applied for and obtained naturalization; was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet Socialist Republics.

(h) That the said PETER CHAUNT intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to his naturalization, as set forth in preceding subparagraphs, in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning

his qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340(a) of the Immigration and Nationality Act, 8 U.S.C. 1451 (a), to set aside and cancel the naturalization of said PETER CHAUNT as having been procured by concealment of material facts and by willful misrepresentation.

3. That the last known place of residence of the said PETER CHAUNT is 3305 West 34th Street, Cleveland, Ohio.

s/ MAURICE A. ROBERTS
Attorney

Subscribed and sworn to at Washington in the District of Columbia this 6th day of May, 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d.1 of Title 8 of the Code of Federal Regulations to administer oaths.

s/ ALBERT E. REITZEL
Assistant General Counsel

Appendix B—The Judgment Below

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15843

PETER CHAUNT, *Appellant*,

vs.

UNITED STATES OF AMERICA, *Appellee*.

Judgment

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment

Filed and entered: September 22, 1959

Paul P. O'Brien, *Clerk*

Appendix C—The Opinion Below

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15,843

Sept. 22, 1959

Peter Chaunt, *Defendant-Appellant*,

vs.

United States of America, *Plaintiff-Appellee*.

Appeal from the United States District Court
for the Southern District of California,
Central Divison

Before: Stephens, Maris and Barnes, *Circuit Judges*

Maris, *Circuit Judge*

The defendant, Peter Chaunt, appeals from a judgment entered in the District Court for the Southern District of California which revoked a prior order admitting him to

citizenship and cancelled his certificate of naturalization on the grounds that his naturalization had been procured by concealment of material facts and by willful misrepresentations. The record, which consists largely of testimony and documents offered by the Government, discloses the following pertinent facts:

The defendant, a native of Hungary, came to the United States in 1921 at the age of 22. During 1928 he worked on a Hungarian Communist daily paper, Uj Elore, and with the Young Communist League in Akron, Ohio. In 1929 and 1930 he had been arrested three times in the City of New Haven, Connecticut, charged in the first two instances with the violation of city ordinances and in the third with a general breach of the peace.

During 1930 and 1931 his name appeared in the Daily Worker in connection with some of his activities. On June 21, 1930 an article entitled, "For Offensive Strategy, by Peter Chaunt, District Organizer, District 15", appeared in the Daily Worker. In 1931 he taught the subject "Leninism" at a Communist training school in Ontario, Canada. From 1930 to 1940 he acted as District Organizer for the Communist Party in certain districts located in Connecticut, New York and Missouri. Also, during some of those years he attended conventions and meetings of the Communist Party.

In November 1939 the defendant filed an application for a certificate of arrival and a preliminary form for petition for naturalization with the Immigration and Naturalization Service in New York. He was orally examined under oath on June 27, 1940 by two examiners of the Immigration and Naturalization Service as to the questions and answers appearing on his petition, as well as on supplementary questions. His formal petition for naturalization was thereupon filed in the United States District Court for the Eastern District of New York. The petition was granted and the defendant was naturalized on November 28, 1940.

Thirteen years later the Government brought the present action for defendant's denaturalization under § 340(a) of the Immigration and Naturalization Act of 1952, 8 U.S.C.A. § 1451(a), charging that, in answering the questions propounded to him, the defendant had concealed material facts and had made willful misrepresentations.

The gravamen of the amended complaint was that prior to and at the time of naturalization the defendant intentionally concealed the facts that he was an active member and officer of the Communist Party, and that he had been arrested, and intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order", that he was attached to the principles of the Constitution and well disposed to the good order and happiness of the United States, and that he had never been arrested, whereas in fact he was a member and officer of the Communist Party and by reason thereof and of his knowledge of the nature and principles of that Party was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States, and had been arrested three times. The amended complaint further asserted that as a result of these concealments and misrepresentations the Immigration and Naturalization Service did not make a further investigation as to whether the defendant for five years immediately preceding his application had behaved as a person of good moral character attached to the principles of the Constitution and well disposed to the good order and happiness of the United States and whether he could take the oath of allegiance without mental reservation or purpose of evasion, all as required by section 4 of the Immigration and Nationality Act of 1906, 34 Stat. 596. The district court found that the evidence supported the claims made by the Government and entered judgment revoking the order admitting defendant to citizenship and cancelling Certificate of Naturalization No. 4785200. This appeal followed.

The defendant contends that the findings of the district court must be set aside as erroneous and that, in any event, the issues are res judicata between him and the Government. In reviewing the findings of the district court in denaturalization cases we must scrutinize the record with utmost care to determine whether the Government had carried its burden of proving by "clear, unequivocal, and convincing" evidence, which does not leave "the issue in doubt", that the citizen who is sought to be returned to the status of an alien obtained his naturalization certificate illegally. Schneiderman v. United States, 1943, 320 U.S. 118, 158; Baumgartner v. United States, 1944, 322 U.S. 665, 670; Knauer v. United States, 1946, 328 U.S. 654, 657-658; Nowak v. United States, 1958, 356 U.S. 660, 663; Maisenberg v. United States, 1958, 356 U.S. 670.

We consider first the defendant's contention that the district court erred in finding that he intentionally concealed the fact of his arrests and willfully misrepresented that he had never been arrested. In his preliminary form for petition for naturalization the defendant answered "No" to Question 30: "Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?" The defendant does not contend that this question is ambiguous. The Government called as a witness Calvin Derrenger, the naturalization examiner who conducted the preliminary examination of the defendant, who testified, inter alia, that it was his custom and practice, as well as duty under the regulations of the Immigration and Naturalization Service, to cover thoroughly the question of arrests. He identified various marks which appeared on the defendant's preliminary form for petition for naturalization. In respect to the initials "RE" he testified: "They mean that the petitioner could read English. I tested him on that and found he could read English." As to the initials "NCR" he stated: "They mean that I asked the petitioner if he had any record of arrests anywhere and his answer was

that he had none, and the 'NCR' stands for no criminal record anywhere". This testimony was undisputed.

The district court found that prior to his naturalization "(a) On or about July 30, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729.' Disposition, 'Plea—not guilty—Discharged'; (b) On or about December 21, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances'. Disposition, 'Demurrer filed 12-27-29. Demurrer overruled—Whitaker 12-27-29, plea—not guilty, Found J.S.';" and "(c) that on the 14th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he 'did commit, violate, Peter Chaunt, general breach of peace'; 'plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed'". It appears that upon the appeal the defendant pleaded not guilty and the case was "nolled" by the Court of Common Pleas.

The district court found that the defendant's failure to disclose his record of arrests was an intentional concealment of a material fact and a willful misrepresentation which foreclosed the Immigration and Naturalization Service and the district court from making a further investigation as to whether he had all the qualifications for citizenship required by the Act of 1906, as a result of which the Service recommended and the district court granted his petition for naturalization. We think that these findings are amply supported.

It has been held that concealment of arrests, revelation of which might have led the Immigration and Naturalization Service to make further investigation of the petitioner, is sufficient ground upon which to base a decree of denaturalization. Del Guercio v. Pupko, 9 Cir. 1947, 160 F. 2d 799; United States v. Corrado, E.D. Mich. 1953, 121 F. Supp. 75, aff. 6 Cir. 1955, 227 F. 2d 780, cert. den. 351 U.S. 925; United States v. Accardo, D.C.N.J. 1953, 113 F. Supp. 783, aff. 3 Cir. 1953, 208 F. 2d 632, cert. den. 347 U.S. 952; Stacher v. United States, 9 Cir. 1958, 258 F. 2d 112, cert. den. 358 U.S. 907; United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757.

Naturalization is a great privilege and one which once granted cannot lightly be taken away. But when granting the right the Government is entitled to frank, honest and unequivocal answers from the petitioner for citizenship to the questions put to him to throw light upon his qualifications or lack of them. And so the defendant here had a duty to answer honestly and fully the questions propounded to him. As stated by the district court in United States v. Corrado, E.D. Mich. 1953, 121 F. Supp. 75, 78, ff. 6 Cir. 1955, 227 F. 2d 780, cert. den. 351 U.S. 925: "If he had revealed that he had been arrested it does not necessarily follow that he would have been denied citizenship, but this was information that the examining officers were charged by law with obtaining and to which they were entitled. The seriousness of the offense and the materiality of any arrest or conviction would be then up to the examining officers, and if they wrongfully refused petitioner naturalization he could then appeal to the courts." It was not necessary for the district court to determine whether, upon further inquiry prompted by knowledge of the defendant's arrests, he would have been found ineligible for citizenship. For the test of the materiality of such a concealment and misrepresentation of facts "is not whether naturalization would have been refused if defendant had revealed the truth, but whether, by his false

answers, the government was denied the opportunity of investigating the facts relating to his eligibility." United States v. Chandler, D.C. Md. 1957, 152 F. Supp. 169, 177.

The defendant, however, contends that the findings of the district court must be set aside because there is no finding that any of the arrests were valid. For this proposition he relies upon United States v. Kessler, 3 Cir. 1954, 213 F. 2d 53. His reliance upon the Kessler case is misplaced. For in that case the Court of Appeals for the Third Circuit concluded, as that court pointed out in United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757, 760, that there had not been an untruthful answer given to the question concerning arrests, and so no fraud had been committed. That conclusion was based upon the fact that the arrests alleged were false arrests without color of right for an offense unknown to the law and which it was, therefore, not the duty of the applicant to report.

In the present case, however, all three arrests were for offenses known to the law, the first two for the violation of specified New Haven ordinances and the third for a breach of the peace, an offense known at common law. The defendant urges that the first two arrests were for the violation of ordinances which on their face are unconstitutional so that the failure to report them could not have been a material concealment or misrepresentation. It is possible that the ordinances in question were sought to be enforced against the defendant in violation of his constitutional rights. But neither the text of the ordinances nor the circumstances under which the arrests were made were before the district court. Nor was it necessary that they should be. For the court was not called upon to determine the propriety of the arrests or the guilt of the defendant. Whether the arrests were proper and, if so, the extent of their bearing upon the defendant's qualifications for citizenship were questions which the Immigration and Naturalization Service and the District

Court for the Eastern District of New York were entitled to consider in the proceeding for defendant's naturalization. That consideration was blocked by the defendant through his concealment of them.

Moreover the third arrest, that for "general breach of the peace" is not subject to the constitutional attack which the defendant levels against the other two. The failure to disclose it alone would be sufficient to sustain the judgment of the district court. For it is not the number of arrests, nor the character of the offenses, which is the important factor. It is the concealment of any material fact sought to be inquired into, including any arrest, which is the fraudulent act and which justifies not only the finding of fraud, but also the finding which the district court here made, that the defendant had not been of good moral character for a period of five years immediately preceding his applicationt and thus did not meet the statutory prerequisite to citizenship. Del Guercio v. Pupko, 9 Cir. 1947, 160 F. 2d 799; United States v. Lumantes, D.C. Cal. 1955, 139 F. Supp. 574, aff. 9 Cir. 1956, 232 F. 2d 216; United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757.

In the absence of any explanation by the defendant of his answer "No" to the question in respect to arrests, we find that the record fully justifies the finding of the district court that he deliberately concealed his arrests and falsely represented that he had never been arrested. Since these findings furnish ample support for the judgment revoking the defendant's naturalization it is unnecessary for us to consider whether, as the defendant urges, the findings of the district court as to his concealment of his membership in the Communist Party and as to his lack of attachment to the principles of the Constitution and his disposition toward the good order of the United States can stand in the light of the decisions of the Supreme Court in Nowak v. United States, 1958, 356 U.S. 660, and Maisenberg v. United States, 1958, 356 U.S. 670, which were handed

down after the district court entered its judgment in this case.

We come then to the defendant's final argument that the issues sought to be raised by the Government in this case were concluded by the order of the district court which admitted him to citizenship and are res judicata in this proceeding. As to this it is sufficient to say that the overwhelming weight of authority is to the effect that, at least in the case of an order of naturalization procured, as in this case, ex parte without an actual contested litigation of the issues, the issues as to concealment of material facts and willful misrepresentations in the procurement of the order of naturalization are open in a subsequent suit by the United States for the revocation of the order and the cancellation of the certificate of naturalization. Tutun v. United States, 1926, 270 U.S. 568, 579; Baumgartner v. United States, 1944, 322 U.S. 665, 672; Knauer v. United States, 1946, 328 U.S. 654; Stacher v. United States, 9 Cir. 1958, 258 F. 2d 112, 119-120, cert. den. 358 U.S. 907.

The judgment of the district court will be affirmed.

(Endorsed:) Opinion. Filed Sept. 22, 1959.

Paul P. O'Brien, Clerk.

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FILED
FEB 15 1960
JAMES R. BROWNING, Clerk

No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1958

PETER CHAUNT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM R. WILKEY,
Assistant Attorney General,
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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 593

PETER CHAUNT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (X R. 3-9;[1] Pet. App. 5a-13a) is reported at 270 F. 2d 179. The findings and judgment of the district court are set forth at III R. 561-573.

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[1] The record filed in this Court consists of ten numbered volumes and numerous packaged exhibits. Volumes I-III (pp. 1-579) contain the pre-trial papers (pleadings, requests for interrogatories, depositions, etc.), as well as the findings of the district court; volume IV duplicates some of the material found in the first three volumes; volumes V-VIII (pp. 5-549) are the transcript of the trial; volume IX is an index to the record; volume X contains the proceedings in the court of appeals.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1959 (X R. 10; Pet. App. 4a-5a). The petition for a writ of certiorari was filed on December 16, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner may raise in this Court for the first time his contention that the complaint, in an action for denaturalization, may not include an additional ground to that alleged in the affidavit of good cause.

2. Whether, in any event, that contention is correct.

3. Whether petitioner's concealment and misrepresentation of past arrests was material.

4. Whether, in any event, there was clear and convincing evidence that petitioner concealed and misrepresented his Communist Party membership, the ground set forth in the affidavit of good cause.

STATUTES INVOLVED

Section 340(a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, as amended, 68 Stat. 1232, 8 U.S.C. 1451, provides in pertinent part:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking

and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation * * *.

STATEMENT

Petitioner, a native of Hungary, entered this country in 1921, and was admitted to United States citizenship by a decree entered by the United States District Court for the Eastern District of New York on November 28, 1940 (X R. 3). On April 21, 1955, the government filed a second amended complaint in the District Court for the Southern District of California pursuant to Section 340(a) of the Immigration and Nationality Act of 1952 (*supra*), praying that the decree of naturalization be set aside on the ground that petitioner had procured citizenship by concealment of material facts and by willful misrepresentations (I R. 180-188). The complaint charged that, in the proceedings which led to his naturalization, petitioner (1) intentionally concealed and falsely represented that he was not a member of the Communist Party, whereas he had been an active member and officer of the Party since 1926, and (2) that he intentionally concealed and falsely represented that prior to his naturalization he had never been arrested or charged with a violation of any law of the United States or state or any city ordinance or traffic regulation, whereas he had, in fact, been so arrested and charged (I R. 180-188).

Attached to the complaint was a sworn affidavit (see Pet. App. 1a-4a) prepared by an attorney of the Immi-

gration and Naturalization Service, who stated that, from his examination of the records of the Service, it appeared that in the prenaturalization proceedings petitioner had alleged under oath "[t]hat he had never belonged to any Communist, Nazi or Fascist organization, and that the only organization to which he had ever belonged was the fraternal benefit society of International Workers Order"—allegations which were false, in that petitioner had been an active member and officer of the Communist Party since 1926 (I R. 189). The affidavit did not refer to the charge of concealing and misrepresenting arrests.

The evidence at the denaturalization trial included the following:

1. Government witness Calvin W. Derenger, who had acted as preliminary examiner at the time the petition for naturalization was filed, testified on the basis of normal practice and his notations[2] that he had asked petitioner whether he believed in Nazism, Communism, or Fascism, and that petitioner, who was then under oath, responded in the negative (V R. 17-23). Similarly, based upon normal practice and his notations on the preliminary forms, Derenger further testified that he had orally asked petitioner where he

[2] Derenger had no independent recollection of petitioner, or of the specific questions he had asked him (V R. 16, 29-30). His testimony was therefore based on the established procedure in conducting preliminary examinations, his own custom and practice, and notations, markings, and remarks which he had placed on petitioner's application forms during the examination (see, *e.g.*, Govt. Exs. 2f and 2g, reproduced at II R. 292). These documents, the truthfulness and genuineness of which had been stipulated to by counsel before trial (V R. 11), were introduced into evidence by the government (V R. 112).

worked and to name all the organizations to which he belonged; in response, petitioner named only the Fraternal Benefit Society of International Workers Order (V R. 32-35).[3]

Petitioner answered "No" when explicitly asked in question 30 of the Preliminary Form, "Have you ever been arrested or charged with violation of any law of the United States or state or any city ordinance or any traffic regulation" (Govt. Ex. 2b). Derenger testified that he checked petitioner's answer by oral repetition of the form question in accord with his established practice to go thoroughly into the applicant's arrests and to "make sure [applicants] gave a complete answer" (V R. 40-41; see also V R. 59-63, 66-67). The witness further stated that, under normal practice, if any arrests had been disclosed, the matter would have been further investigated (V R. 65-66).

2. During the years 1929-1930, petitioner had been arrested on several occasions in New Haven, Connecticut, on charges of having violated local ordinances. The records of these arrests were uncontested and were admitted into evidence (Govt. Exs. 1A-1B; see II R. 424-426; VII R. 484; X R. 4).

On July 30, 1929, he was arrested for distributing hand-bills against the peace of the state. He pleaded not guilty and was discharged. On December 21, 1929,

[3] The "Results of Examination" (Govt. Ex. 2g), which were endorsed on the back of the triplicate copy of Chaumts' Petition For Naturalization, contained the following remarks of the examiner placed there as petitioner's response to the above question:

> Organization-Fraternal Benefit Society of International Workers Order where applicant is employed—no others C.D. [Calvin Derenger]

petitioner was arrested for making a public demonstration. He pleaded not guilty but it is unclear as to the court's disposition of the case.[4] And on March 16, 1930, petitioner was arrested for committing a breach of the peace. He pleaded not guilty but was found guilty and fined $25. On appeal, the case was "nolled".

3. Uncontradicted testimony and real evidence of petitioner's Communist Party activities may be summarized as follows:

(a). Government witness John Lautner testified that he (Lautner) joined the Communist Party in 1929 and that he retained his membership until January 17, 1950 (VI R. 287, 291). Following a course of study at the international training school of the Communist Party, he held various official positions in committees and commissions of the Party in Detroit, Michigan (1930-1931), Canada (1931-1932), Cleveland, Ohio (1932), and New York City (1933-1936). From 1936 to 1940 he was district organizer of the Communist Party in West Virginia; in 1947, some time after his discharge from the Army, he was appointed to head the Party's New York State Discipline Commission; and, in 1948, he was also named as a member of the National Review Commission (VI R. 289-291).

Lautner testified that he first met petitioner in 1931 at Hamilton, Ontario, at a Communist Party training school, where petitioner came to teach a course in the basic theories of Leninism (VI R. 291-296). At this time he knew petitioner to be the district organizer of the Communist Party in Buffalo, New York (VI R.

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[4] The record shows only, "Found J.S."—possibly meaning judgment suspended.

297-298).[5] The next time Lautner saw petitioner was at a National Convention of the Communist Party in either 1936 or 1938. Petitioner was there as head of the Missouri delegation of the Party (VI R. 298-301; VII R. 383). As Lautner put it, during the 1930's petitioner was well known in the party to the "[h]igh functionaries * * * and so-called old-timers" (VII R. 449-450).

Lautner thereafter met with petitioner in 1940 in New York City to discuss problems relating to a Communist Party training school of which petitioner was then an Assistant Director (VII R. 383-387). They met on several occasions up until 1942 in connection with the school's activities (VII R. 386-389). The last time Lautner saw petitioner was in Cleveland, Ohio, in the winter of 1945, at a Communist meeting. Petitioner attended as the district representative of the Ohio District of the Communist Party (VI R. 331-332, 335-336).

(b). Government witness Kenneth J. Kalke, a member of the Young Communist League from 1929 to 1931 (V R. 113), testified that he first met petitioner in Buffalo, New York, in the winter of 1930-1931, at a meeting held at the office of the Unemployed Council of that city. At this meeting petitioner introduced

[5] Lautner had also heard that petitioner had been district organizer of the Communist Party in Connecticut and that, sometime after he had left Buffalo, he had been district organizer in St. Louis, Missouri (VI R. 297-298; VII R. 411). According to Lautner, district organizers during the period 1930-1940 took their orders directly from the Central Committee of the Communist Party (VII R. 397-398). He further testified that this position required a thorough understanding of the ideology and philosophy of Marxism-Leninism, and the application of this philosophy in carrying out the day-to-day activities of the Party (VII R. 338-339).

himself by saying: "I am Comrade Chaunt. I am the new district organizer of the Communist Party" (V R. 115).[6] Thereafter, in March 1931 in Rochester, New York, Kalke heard petitioner, who was introduced as the district organizer of District 4, address a convention of the Young Communist League. In this speech petitioner pointed out the importance of that organization's work in training and recruiting personnel for the Communist Party (V R. 122-124). In April 1931, Kalke saw petitioner at a meeting of the district committees of the Young Communist League in Buffalo (V R. 124-125) and was assigned by petitioner, at this meeting, to go to Syracuse, New York, as a "colonizer" of the Young Communist League in that city (V R. 126-127, 129-130). During 1931, petitioner also directed Kalke to take part in certain "agitational" work in Buffalo and Niagara Falls (V R. 116-121, 131-132).

(c). Government witness George E. Duemler testified that during the period 1933-1935 he was in private law practice in St. Louis, Missouri, and a member of the Socialist Party. His legal work consisted of representing trade unions, and nationality and unemployed groups primarily Socialist in leadership (VI R. 209, 223-226). Duemler stated that sometime in June 1933 he had a conversation with petitioner at Communist Party headquarters in St. Louis. At this meeting petitioner, as on prior occasions, informed him that he was the district organizer for the Communist Party for the St. Louis district (VI R. 215).

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[6] The area covered by the Buffalo District in 1931 (District 4) included all of western and part of central and south central New York and a small portion of northwest Pennsylvania (V R. 133).

Duemler further testified that on July 3, 1933, he was chairman of a convention of the Continental Congress of Workers and Farmers in Columbia, Missouri, and that, while the convention was in session, petitioner marched down the center aisle at the head of a group of people demanding "that credentials be furnished to the Communist Party", and other organizations which he represented (VI R. 211, 214, 216-218); that on another occasion, in February 1934, petitioner was the Communist Party representative at a protest meeting against Austria (VI R. 218-219); and that he (Duemler) was convinced during this period (1933-1935) that petitioner was the "one person in complete authority so far as the Communist Party was concerned in that area" (VI R. 237).[7]

(d). Numerous items of real evidence were also introduced at trial to establish petitioner's activity and official status in the Communist Party. These included Communist Party membership books for 1928 (Govt. Ex. 4), 1930 (Govt. Ex. 5), 1931 (Govt. Exs. 6 and 7), signed by petitioner as district organizer (VI R. 192-197, 326), and numerous articles from the Daily Worker, describing petitioner's activities and official status in the Party (VII R. 406-416; Govt. Ex. 8-13).

4. When called by the government, petitioner invoked the privilege against self-incrimination as to all questions, except the one inquiring whether he was the

[7] Government witness Howard Rushmore, a Communist Party member until December 1939 (VI R. 247-248), testified that he had first met petitioner in St. Louis in the winter of 1934-1935 at Communist Party headquarters, and that petitioner had identified himself as the district organizer of the Communist Party of Missouri (VI R. 241-242; see also VI R. 243-247).

defendant in the action (VIII R. 532-538). He did not testify in his own behalf.

At the conclusion of the trial, the district court entered a judgment cancelling petitioner's naturalization. The court found that there was "clear and unequivocal and convincing evidence" establishing "beyond all reasonable doubt" that petitioner had, by fraudulent and wilful concealments and misrepresentations, "foreclosed investigation as to whether [he] had all of the qualifications for citizenship required," and had thus procured naturalization by concealment and misrepresentation of material matters, *i.e.*, arrests, active membership and official status in the Communist Party, and attachment and fidelity to the United States (III R. 561-573).

The court of appeals, finding that petitioner's concealed arrest record amply supported the judgment of the district court, unanimously affirmed, without passing upon the other findings of the district court (X R. 3-9).

ARGUMENT

The petition for a writ of certiorari challenges only the basis upon which the court of appeals affirmed the judgment—that petitioner concealed and misrepresented his arrest record. The petition suggests (Pet. 5, n. 3) that, if that determination was erroneous, this Court should reverse and remand to the court of appeals to consider the remaining grounds of the district court's decision.

Petitioner asserts that the failure of the affidavit of good cause to allege evidentiary matter as to conceal-

ment and misrepresentation of his arrest record (Pet. 8), and the lack of any evidence at trial that divulgence of these arrests during the proceedings leading up to his naturalization would have been material—that is, might have reasonably led to a denial of his application for citizenship (Pet. 9-10)—warrant reversal of the judgment below. These contentions do not go to the additional finding of the district court cancelling the certificate of citizenship on the ground that petitioner had concealed and misrepresented his Communist Party membership, a finding which the court of appeals deemed unnecessary to review. While we believe that the finding of Party membership, convincingly established by the evidence, is independently sufficient to support the cancellation order (see *infra*, pp. 17-19), in view of petitioner's request for a remand for review of that issue by the court of appeals, we will discuss first the basis on which the court of appeals affirmed the judgment and show that there is no occasion either for further review or for a remand of the case.

1. (*a*). Petitioner first contends (Pet. 8) that a denaturalization judgment may not be based on a ground included in the complaint but not in the affidavit of good cause. This contention, however, was not raised either in the trial court or the court of appeals.[8] It is

[8] It is significant to note that *United States* v. *Zucca*, 351 U.S. 91, upon which petitioner relies (Pet. 8), was decided almost a year before the trial in the instant case. Similarly, the other two cases cited by petitioner (*Matles* v. *United States*, 356 U.S. 256 and *Nowak* v. *United States*, 356 U.S. 660), were decided nine and ten months, respectively, before petitioner's opening brief in the court of appeals.

well established that judgments will not ordinarily be set aside on appeal for errors not brought to the attention of the trial court. See, *e.g., United States* v. *Atkinson*, 297 U.S. 157, 159; *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 239. While petitioner did attack the complaint on other grounds before trial, this principle is equally applicable when an objection does not include the specific ground relied upon on appeal. See 1 Wigmore, *Evidence* (3d ed., 1940), § 18; *e.g., Litton* v. *United States*, 177 F. 2d 416 (C.A. 8). While this Court, of course, has the power to notice errors even though they were not called to the attention of the trial court or court of appeals, this power is exercised only in clear cases and in exceptional circumstances, *Kessler* v. *Strecker*, 307 U.S. 22, 34, where "the errors are obvious, or * * * seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States* v. *Atkinson*, *supra*, 297 U.S. at 160. The error in the instant case—even if, contrary to our contentions below, there is any—is neither obvious nor would it "seriously affect the fairness, integrity or public reputation of judicial proceedings" (see *infra*, pp. 13-14). Moreover, since the government could have amended the affidavit to conform to the complaint, the alleged defect could have been cured if petitioner had raised his objection at the proper time. Petitioner cannot inject a new theory into the case now that it is too late for the government to correct the alleged defect. See *United States* v. *Di Re*, 332 U.S. 581, 588; *Giordenello* v. *United States*, 357 U.S. 480, 487-488.

(*b*). In any event, the government submits that the

holding of the district court, affirmed by the court of appeals, was not erroneous.

The basic aim underlying the requirement of a good-faith affidavit is "to protect those proceeded against from ill-considered action" (*Nowak* v. *United States*, *supra*, 356 U.S. at 662), which might cause damage to reputation and standing in the community. The key purpose, in other words, is to put the defendant on notice in reasonable detail that the government is not initiating such proceeding in reckless disregard of his rights or reputation, but is proceeding only after a careful evaluation of facts which it is willing to put to the test of judicial scrutiny. *United States* v. *Zucca*, *supra*, 351 U.S. at 99-100. It is apparent from its face, and petitioner makes no contrary claim here, that the affidavit in this case meets these purposes. It describes petitioner's Communist Party membership and the concealment and misrepresentation of such membership in adequate detail. In short, as the affidavit stands, it sets forth "evidentiary matters showing good cause for cancellation of citizenship". *Id.* at 99.

Petitioner argues, in effect, that the affidavit limits the scope of the complaint and that a ground not set forth in the affidavit cannot be alleged in the complaint or relied upon by the court in decreeing cancellation of citizenship. We see no basis for such a stringent requirement. First, petitioner's view equates the evidence that must be set forth in the affidavit with that which is required to support the ultimate judgment of denaturalization. Just as that is not the standard for determining probable cause to arrest or search under

the Fourth Amendment (see *Brinegar* v. *United States*, 338 U.S. 160, 175-176), so it should not be the test of the validity of an affidavit in a denaturalization proceeding. To designate the affidavit as the depository of each and every charge which must be proved, would be to render the complaint completely meaningless. Cf. *Schneiderman* v. *United States*, 320 U.S. 118, 159-160, where this Court refused to consider as part of the charge issues set forth in the affidavit of good cause which were outside the scope of the complaint.

Second, the defendant gains no additional protection by requiring that all the grounds asserted in the complaint be included in the affidavit and by barring any different reason from being used as an alternative charge in the complaint. The affidavit gives him protection against irresponsible governmental action instituting a denaturalization suit; the complaint gives him notice of what he must defend against. He is thus fairly protected. We submit that as long as a defendant is secure against the possibility of governmental irresponsibility and excess by the requirement that at least one ground evincing good cause be stated in the affidavit, the statutory mandate is satisfied.

2. Petitioner further contends (Pet. 9-11) that the concealments and misrepresentations of his arrest record were not material since there was no showing that disclosure could have led to a denial of naturalization. The test of materiality is not, however, whether truthful answers would have themselves established a bar to citizenship. Instead, the proper standard is whether the falsification forecloses intelligent inquiry into ob-

jective facts, which, if they had been revealed, might have prevented the acquisition of citizenship.

Petitioner, in order to be naturalized, was required to establish that he had behaved as a person of good moral character during the five years preceding his petition for naturalization.[9] The question asked petitioner concerning his prior arrests was obviously material since they related directly to the issue of good moral character. The naturalization court was entitled to weigh all the evidence necessary to determine good moral character—including the evidence which might have been discovered if, as the district court found here (*supra*, p. 10), the government had not been prevented from making an investigation based on the concealed facts. Thus, the federal courts have repeatedly held that false answers to questions concerning an alien's criminal record, by shutting off further inquiry into the alien's moral character, constitute a fraud upon the naturalization court and are thus valid grounds for denaturalization. See, *e.g.*, *United States* v. *De Lucia*, 256 F. 2d 487, 490 (C.A. 7), certiorari denied, 358 U.S. 836; *United States* v. *Montalbano*, 236 F. 2d 757, 759-760 (C.A. 3), certiorari denied *sub nom. Genovese* v. *United States*, 352 U.S. 952; *Corrado* v. *United States*, 227 F. 2d 780, 782-784 (C.A. 6), certiorari denied, 351 U.S. 925; *Stacher* v. *United States*, 258 F. 2d 112, 123 (C.A. 9), certiorari denied, 358 U.S. 907; *United States* v. *Accardo*, 113 F.

[9] The pertinent requisites in this case are set out in the Nationality Act of 1906, Sec. 4, 34 Stat. 596, as amended, 45 Stat. 1512, under which petitioner was naturalized.

Supp. 783 (D. N.J.), affirmed, 208 F. 2d 632 (C.A. 3), certiorari denied, 347 U.S. 952; *United States* v. *Chandler*, 152 F. Supp. 169, 177, 179 (D.Md.). Even though petitioner's misrepresentation concerned arrests occurring before the statutory period, the arrests related to petitioner's moral character in general and their concealment prevented inquiry directed specifically at his moral character during the statutory period. Accord, *United States* v. *De Lucia, supra; Corrado* v. *United States, supra; Stevens* v. *United States*, 190 F. 2d 880, 881 (C.A. 7). In other words, it is not for the alien to decide, in answering clear and explicit questions asking for particular information, which facts concerning his moral character need not be disclosed because he believes that they are not important enough for the government to investigate.

Petitioner also contends (Pet. 9-10) that he had no duty of disclosure since the arrests were unlawful in the light of later decisions of this Court relating to freedom of speech and of assembly. Even if the argument were valid as to the two arrests for distribution of handbills and public demonstration, it does not reach the third arrest for "general breach of the peace."[10] As the court of appeals stated (270 F. 2d at 183): "[t]he failure to disclose it [the latter arrest] alone would be sufficient to sustain the judgment of the district court. * * * It is the concealment of any material fact sought to be inquired into, including any arrest,

[10]As to this arrest, petitioner merely says (Pet. 10) that he was fined only $25 and that the case was later "nolled." Of course, this does not establish that the *arrest* was illegal.

which is the fraudulent act and which justifies not only the finding of fraud, but also the finding which the district court here made * * *." 270 F. 2d at 183.[11]

3. In addition to the ground just discussed, the finding of the district court as to petitioner's concealment

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[11] Petitioner relies (Pet. 9, 10, 11) on *United States* v. *Anastasio*, 226 F. 2d 912 (C.A. 3), certiorari denied, 351 U.S. 931, and *United States* v. *Kessler*, 213 F. 2d 53 (C.A. 3), to support his contention that "denaturalization may not be based on misrepresentations of arrests the disclosure of which would not have warranted denial of naturalization" (Pet. 11). This reliance is misplaced. In *Anastasio*, unlike the instant case, the government knew of the defendant's arrest record prior to naturalization, and therefore was not deceived. 226 F. 2d at 917-918. In *Kessler*, the defendant testified at her denaturalization trial that she had originally given a negative answer concerning the arrests because the attorney for her union had advised her that the arrests were illegal; that it was her understanding that she had done no wrong; and that she had no intention of lying. The record showed that the trial courts had discharged Kessler after each arrest because the arrest had been made for a non-existent crime. Therefore, the court of appeals held that the defendant's answers were not *wilful* mistatements, and that, in fact, the answers were not misstatements at all, since the question asked did not mean to inquire concerning false or illegal arrests.

The instant case is totally unlike *Kessler* in two vital respects. First, petitioner did not take the stand to testify why he did not disclose his arrests, nor is there anything in the record on which to challenge the finding below that the misrepresentation was knowing and wilful. Second, here the trial courts did not find any of the arrests to be illegal, and, moreover, as we have shown, petitioner does not suggest any illegality even now as to one of the three arrests. And see *United States* v. *Montalbano*, *supra*, 236 F. 2d at 760, and 760, n. 3, a later case also decided by the Third Circuit, which specifically considered the very portion of *Kessler* quoted by petitioner (Pet. 10), said that the decision in *Kessler* was based on the fact that the defendant had not made an untruthful answer since her arrests were illegal, and held that the concealment of legal arrests constitutes a material misrepresentation since it prevents the government from making further inquiry. Since at least one of the arrests here was legal, the decision of the court below is completely consistent with the position of the Third Circuit.

and misrepresentation of his Communist Party membership independently supports the order of denaturalization.

The evidence adduced at the trial established conclusively that, in the proceedings leading up to his naturalization in 1940, petitioner, while under oath, was asked by the preliminary examiner to name all of the organizations to which he belonged and to state whether he believed in Communism, Fascism, or Nazism. The plain import of petitioner's responses listing membership only in a fraternal order and denying belief in any of these three ideologies (see *supra*, pp. 4-5) was denial of Communist Party membership.[12] The unrebutted facts, however, were that prior to and subsequent to his naturalization petitioner was an active and ardent Party member, holding numerous posts in the Party hierarchy (see *supra*, pp. 6-9). In short, it was shown clearly and convincingly that petitioner had intentionally and wilfully misrepresented material

[12] The district court's holding is not inconsistent with the decisions of this Court in *Nowak* v. *United States*, 356 U.S. 660, and *Maisenberg* v. *United States*, 356 U.S. 670. In those cases, the fraud claimed stemmed solely from the defendants' allegedly false answers to question 28 on the preliminary naturalization form—"Are you a believer in anarchy? * * * Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? * * *" The Court found that this question could well be interpreted as requiring disclosure only of membership in anarchistic organizations, and therefore held that it was "too ambiguous" to sustain the fraudulent procurement charge based on membership in the Communist Party. *Nowak*, 356 U.S. at 664-665. In this case, however, petitioner was categorically questioned by the preliminary examiner, during oral interview, as to his organizational memberships generally, and specifically as to his possible Communistic beliefs.

facts as to conduct which provides a basis for revocation of citizenship. See *Sweet* v. *United States*, 211 F. 2d 118, 120 (C.A. 6), certiorari denied, 348 U.S. 817.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1960.

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IN THE

Supreme Court of the United States

No. [redacted] 32

PETER CHAUNT, *Petitioner*,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR CERTIORARI

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IN THE

Supreme Court of the United States

No. 593

PETER CHAUNT, *Petitioner*,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR CERTIORARI

I. The Discrepancy Between the Complaint and the Affidavit Was Raised in the Trial Court

The government is wrong in asserting (Opp. 11) that petitioner did not raise in the trial court his contention that a denaturalization judgment may not be based on a ground not stated in the affidavit of good cause.

The original complaint (I R. 2-8) included the ground of misrepresentation and concealment of arrests (I R. 5-6), along with the grounds contained in the affidavit. Petitioner filed a motion to dismiss the

complaint (I R. 10-12), which included the following paragraph (I R. 12):

> "IV. The Court is without jurisdiction in that one of the causes of action sought to be alleged in the complaint is not supported by an affidavit of good cause as required by section 340(a) of the Act."

In addition, petitioner filed a motion to strike certain allegations of the complaint, including the two paragraphs (XIII and XIV) which alleged the arrests and their materiality (I R. 19-20).

After a hearing, the trial court denied in toto both the motion to dismiss and the motion to strike (I R. 35-36).

The complaint was subsequently amended by the government several times. But certainly petitioner was under no obligation, and it would have been fruitless, to raise again before the trial court the same objection which the trial court had already overruled.*

II. The Omission of the Arrest Ground From the Affidavit Is Fatal to a Judgment Based on the Arrests

The government argues that the good-cause affidavit satisfies the purpose of the statute so long as it alleges some cause for denaturalization even if it fails to mention the particular cause on which the judgment is based (Opp. 13-14). This Court, of course, took a

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* The facts thus make inapposite the government's claim (Opp. 12) that it was deprived of an opportunity to amend the affidavit to conform to the complaint. But it might be added that the claim is also unsound because this Court has held that failure to file a proper affidavit with the complaint cannot be cured by filing such an affidavit after the action was instituted. *Matles* v. *United States*, 356 U.S. 256; *United States* v. *Zucca*, 351 U.S. 91.

contrary view in *Nowak* v. *United States*, 356 U.S. 660, 662 (see Pet. 8). And in principle, an affidavit which gives the wrong ground is worse than no affidavit at all. The latter case is merely an omission; the former is misleading.

As the government recognizes (Opp. 13), the affidavit is intended "to protect those proceeded against from ill-considered action." But the fact that such protection is accorded as to one cause of action does not diminish the need for such protection as to another. The government's argument, if accepted, would permit it to stultify the affidavit requirement by eliminating from the affidavit precisely those grounds which the government considers most important or which may be the only ones it presses at the trial.

III: The Government's Contention Indicates That the Materiality Question Should be Reviewed by This Court

The government seems to contend (Opp. 14-16) that materiality is satisfied whenever a falsification or nondisclosure foreclosed further inquiry into a relevant area.

The true test, however, is not merely whether further inquiry was foreclosed. It is whether the foreclosure of further inquiry *deprived the government of information which, if known, would have barred citizenship.* If the further inquiry would have made no difference, obviously a blocking of the inquiry could not be material. This is the general test for setting aside judgments procured by fraud. Restatement, Judgments (1942) secs. 118, 121, 126(2)(b). It has been applied in other fields (e.g. *Calvillo* v. *Robinson*, 271 F.2d 249 (7th Cir.)), and was applied in denaturalization cases by the Third Circuit in *United States*

v. *Anastasio*, 226 F. 2d 912, cert. den. 351 U.S. 931, and *United States* v. *Kessler*, 231 F. 2d 53. (See Pet. 9-11.)

In the present case, the government impliedly concedes that the insignificant arrests which occurred years before the statutory good-character period (see Pet. 9) would not in themselves have barred naturalization. But neither does it cite any other facts which would have been discovered if the arrests had been revealed, much less any such facts which would have warranted refusal of citizenship. All we have is the government's speculation that an investigation occasioned by knowledge of the arrests might have discovered other, unspecified, facts which "might have prevented the acquisition of citizenship" (Opp. 15). In view of the heavy burden of proof which rests on the government in a denaturalization case (*Schneiderman* v. *United States*, 320 U.S. 118; *Baumgartner* v. *United States*, 322 U.S. 665), it is clear that the government did not here establish the necessary element of materiality.

The government's Opposition shows (pp. 15-16) that the erroneous test of materiality advanced by the government and employed by the court below (see Pet. 7, 10) has been applied by other lower federal courts in denaturalization cases. The prevalence of this misconception of the materiality requirement indicates the need for intervention by this Court.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 22

PETER CHAUNT, *Petitioner*,

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals
For the Ninth Circuit

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 22

PETER CHAUNT, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

BRIEF FOR PETITIONER

OPINION BELOW

The opinion below (R. 91-98) is reported in 270 F. 2d 179.

JURISDICTION

The judgment below was entered on September 22, 1959 (R. 98). Petition for certiorari was filed on December 16, 1959, and was granted on February 29, 1960 (R. 99). The jurisdiction of the Court rests on 28 U. S. Code, sec. 1254(1).

STATUTE INVOLVED

Section 340(a) of the Immigration and Nationality Act, 66 Stat. 163, 260, as amended by an Act of September 3, 1954, 68 Stat. 1232, 8 U. S. C. 1451,[1] provides, in part, as follows:

> "It shall be the duty of the United States Attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title [sec. 1421 of 8 U.S.C.] in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively . . . ."

QUESTIONS PRESENTED

1. Whether a denaturalization judgment may be based on a ground not alluded to in the affidavit of good cause, the filing of which is required by the denaturalization statute as a prerequisite to the filing and maintenance of the action.

2. Whether denaturalization may validly be predicated on concealment in the naturalization proceedings of an arrest record, even though (a) disclosure of the arrests would not have led to denial of naturalization,

---

[1] The amendment substituted "'United States attorneys'" for "'United States district attorneys.'"

(b) the arrests occurred years before the statutory period of good-behavior for eligibility for citizenship, (c) the arrests did not result in convictions, (d) some of the arrests were under ordinances which violated the First Amendment.

STATEMENT OF THE CASE

Petitioner, a native of Hungary, entered the United States in 1921 at the age of 22 (R. 91, 75, 77). In November 1939, he filed with the Immigration and Naturalization Service an "Application for a certificate of arrival and preliminary form for petition for naturalization" (R. 71, 92). On June 27, 1940, he filed a formal petition for naturalization in the United States District Court for the Eastern District of New York. On that same day he was orally examined by examiners of the Service. On November 28, 1940, the District Court admitted him to citizenship. (R. 73-79, 81, 92.)

On October 1, 1953, the government instituted suit to revoke petitioner's citizenship under Section 340(a) of the Immigration and Nationality Act (*supra,* p.2), on the statutory grounds that he had procured naturalization by concealment and misrepresentation (R. 1). The case was eventually tried on a second amended complaint (R. 15, 88).

A copy of the affidavit of good cause, required by the statute, was attached to both the original and amended complaints (R. 6-10, 23-26). The affidavit recited, in substance, that in the naturalization proceedings the petitioner had falsely denied membership in the Communist Party and that, by virtue of this membership, his representations of attachment to the Constitution,

disposition to the good order of the United States, and intent to renounce foreign allegiance, were false (ibid.).

The original and amended compliants made similar allegations (R. 1-4, 15-22). In addition, they alleged that petitioner had procured naturalization by concealing and misrepresenting a record of arrests (R. 4-5, 16-17, 20-21). The affidavit of good cause contained no reference to arrests or to concealment or misrepresentation of arrests.

After trial, the District Court entered judgment canceling petitioner's naturalization (R. 90), on findings that he had procured naturalization by concealments and misrepresentations regarding all three of the matters alleged in the complaint—i.e., arrests, Communist Party membership, and allegiance (R. 80-89).

The Court of Appeals affirmed solely on the ground that denaturalization was justified by the concealment and misrepresentation of arrests (R. 91-98). The court did not reach the other grounds of the trial court's action, stating (R. 97):

> "Since these findings [regarding the arrests] furnish ample support for the judgment revoking the defendant's naturalization, it is unnecessary for us to consider whether, as the defendant urges, the findings of the district court as to his concealment of his membership in the Communist Party and as to his lack of attachment to the principles of the Constitution and his disposition toward the good order of the United States can stand in the light of the decisions of the Supreme Court in Nowak v. United States, 1958, 356 U.S. 660, and Maisenberg v. United States, 1958, 356 U.S. 670, which were handed down after the district court entered its judgment in this case."

As a result, petitioner's denaturalization was sustained on appeal solely on a ground—concealment and misrepresentation of an arrest record—which was not alluded to in the affidavit of good cause.[2]

The trial court and the Court of Appeals found that in the naturalization proceedings petitioner had denied that he had ever been arrested (R. 85, 93-94).[3] As both courts found (R. 85-86, 94), petitioner had the following record of arrests and dispositions prior to his naturalization:

(1) On July 30, 1929, he was arrested on a charge that he had violated a New Haven ordinance by distributing handbills in a public street. He pleaded not guilty and was discharged. (R. 53-57.) (For text of the ordinance, see R. 69-70.)

(2) On December 21, 1929, he was arrested on a charge that he had violated New Haven park regulations by making "an oration, harangue, or other public demonstration in New Haven Green outside the churches." Petitioner pleaded not guilty. Disposition of the charge is unclear, the record showing merely the unexplained notation, "Found J. S." (R. 58-64.) (For text of the regulations, see R. 70 (par. 4).)

(3) On March 11, 1930, he was arrested on an information charging "general breach of the

[2] We do not brief the grounds for denaturalization which were not considered by the Court of Appeals, on the assumption that if we prevail here the Court will remand the case to the court below for disposition of the remaining grounds. *Barr* v. *Matteo*, 355 U.S. 171 (1957); *Alaska* v. *American Can Co.*, 358 U.S. 224, 227 (1959); *Palmar Steamship Corp.* v. *Scott*, 345 U.S. 427, 444 (1953); *F. C. C.* v. *WJR*, 337 U.S. 263, 285 (1949).

[3] For the evidence supporting this finding, see R. 71 (question 20), 29, 31-32, 73.

peace." He was found guilty and fined $25.00 by the City Court. On appeal to the Court of Common Pleas, the case was "nolled." (R. 65-68.)

The naturalization examiner testified that if an applicant for naturalization admitted that he had been arrested, it was customary for the Service's investigative unit to check with "the authorities" to ascertain whether the full facts were stated (R. 32-33). He also testified that if an arrest record were shown, "the Designated Examiner would make his recommendation on the basis of what the record showed, and the court, of course, would do the same on that" (R. 32).

SUMMARY OF ARGUMENT

I.

Under the statute, the filing of an affidavit of good cause is a prerequisite to the initiation and maintenance of a naturalization suit, and thus to a valid naturalization judgment. The affidavit of good cause contained no reference to arrests or the concealment of arrests. The denaturalization judgment was affirmed below exclusively on the arrest ground. Hence the judgment rests on a ground for which good cause was not shown by affidavit. The judgment is therefore erroneous.

Unless denaturalization litigation is confined to the subjects alleged in the affidavit of good cause, the defendant does not have the safeguard erected by the statute against the bringing of unsupported but highly damaging accusations.

II.

A. The statute authorizes denaturalization only for concealments or misrepresentations which actually

procured naturalization. The concealment or misrepresentation must have made the difference between obtaining and not obtaining naturalization. The government must therefore prove either that the suppressed facts, if known, would in themselves have justified denial of citizenship or that their disclosure would have led to the discovery of other facts which would have justified denial of citizenship.

This principle is supported by authority. It is a short step beyond the materiality requirement in perjury prosecutions, but corresponds to the rules governing relief from other civil judgments.

The court below applied an erroneous standard. It did not find that the arrests, if disclosed, would have justified denial of naturalization. It sustained the denaturalization solely on the ground that non-disclosure of the arrests frustrated further investigation into petitioner's qualifications for citizenship. And it held that it was immaterial whether the further investigation would have discovered facts disqualifying petitioner for naturalization. Thus the court's holding did not even satisfy the materiality requirement for perjury cases, much less the denaturalization requirement that the concealment or representation must have actually procured naturalization.

B. The denaturalization judgment cannot stand under the correct standards of materiality.

1. The only possible relevancy of arrests to the naturalization application arose from the statutory requirement limiting naturalization to those who had behaved as persons of good moral character in the period beginning five years before the application for citizenship. The arrests here occurred more than ten years

before the application; they did not result in convictions; they did not involve accusations of moral turpitude; two of them were under unconstitutional ordinances. The arrests, therefore, were trivial, remote, and irrelevant to good character. Hence they could not in themselves have justified denial of naturalization.

2. Nor is there any evidence that if the arrests had been disclosed, an ensuing investigation would have discovered other facts disqualifying petitioner for citizenship. On the contrary, the government's own testimony indicates that the most such an investigation would have discovered were the immaterial facts in the present record concerning the arrests.

ARGUMENT

I. THE JUDGMENT BELOW IS ERRONEOUS BECAUSE IT AFFIRMED PETITIONER'S DENATURALIZATION ON A GROUND NOT ALLUDED TO IN THE AFFIDAVIT OF GOOD CAUSE.

The court below sustained the cancellation of petitioner's citizenship solely on the ground that petitioner had concealed and misrepresented his arrest record. Yet the affidavit of good cause, required by the statute, contains not a word or intimation regarding arrests or concealment or misrepresentation of arrests; it deals exclusively with other claimed grounds for revocation.

United States v. *Zucca*, 351 U.S. 91 (1956), held that the filing of the good cause affidavit is a prerequisite to the initiation and maintenance of a naturalization suit. The filing is, indeed, a jurisdictional or quasi-jurisdictional requirement. This appears from the Court's holdings that a failure to file the affidavit with the complaint cannot be cured by a later filing, and also

renders the proceeding so nugatory that the trial court cannot coerce testimony by deposition.—*Mathes* v. *United States* and companion cases, 356 U.S. 256 (1958).

A showing of good cause by affidavit is, therefore, essential to a valid denaturalization judgment. So far as the judgment here rests upon concealment and misrepresentation of arrests—and, for present purposes, that is all it does rest on—no such showing was made. Hence the judgment is erroneous.

This analysis is borne out by *Nowak* v. *United States*, 356 U.S. 660 (1958), which held that a particular affidavit "satisfied the purpose of § 338(a) to protect those proceeded against from ill-considered action," because, "In substance the affidavit set forth the same matters upon which the District Court's later decree of denaturalization was based, and showed with adequate particularity the grounds on which the Government's suit rested" (at 662).

As *Nowak* demonstrates, the good cause requirement is violated if denaturalization is decreed on a subject not covered by the affidavit. The affidavit requirement is designed to protect naturalized citizens against unwarranted aspersions of reputation and unnecessary, but harassing, defense of their citizenship. As this Court stated in *United States* v. *Zucca*, *supra*, at 99-100:

> "The mere filing of a proceeding for denaturalization results in serious consequences to defendant. Even if his citizenship is not cancelled, his reputation is tarnished and his standing in the community damaged. Congress recognized this danger and provided that a person once admitted to American citizenship, should not be subject to legal

> proceedings to defend his citizenship without a preliminary showing of good cause. Such a safeguard must not be lightly regarded."

Obviously, the purpose of the affidavit requirement is largely frustrated if the government may allege, litigate, and prevail as to matters not referred to in the affidavit. As to those matters, the citizen's "reputation is tarnished and his standing in the community damaged," and he must "defend his citizenship," all "without a preliminary showing of good cause."

If the government can complain of concealment of arrests on an affidavit alleging only concealment of Communist connections, then it can complain of concealment of Communist connections on an affidavit alleging only concealment of arrests. Which of the two charges causes the greater injury to the defendant will depend on his particular circumstances and on whether the public is, at the time, more aroused against criminals or Communists. The point is, however, that unless the litigation is confined to the subject-matter of the affidavit, the defendant does not have the affidavit protection against the government's making of unsupported but highly damaging accusations. And this would be contrary to the admonition in *Zucca* (at 100) that "such a safeguard must not be lightly regarded."

II. THE MISREPRESENTATION OF THE ARREST RECORD DOES NOT SUPPORT DENATURALIZATION BECAUSE IT DID NOT PROCURE NATURALIZATION.

A. In a Denaturalization Case the Government Must Prove that the Suppressed Facts Would Have Justified Denial of Citizenship or Would Have Led to the Discovery of Other Facts Which Would Have Justified Such a Denial

The statute by its text authorizes denaturalization not for any concealment or wilful representation made in the naturalization proceedings, but only for one which actually *procured* naturalization. The concealment or misrepresentation, therefore, must have made the difference between obtaining naturalization and not obtaining it. If disclosure of the true facts would not have made any difference in the result, obviously the concealment or misrepresentation did not procure naturalization and cannot justify denaturalization.

There are only two situations in which a concealment or misrepresentation can have made the difference in the result and hence be cause for denaturalization:

(1) The suppressed facts, if known, would in themselves have justified denial of citizenship; or

(2) Disclosure of the true facts would have led to discovery of other facts which would have justified denial of citizenship.

It follows that the government must prove one or the other of these alternatives. And it must do so "by clear, unequivocal and convincing evidence which does not leave the issue in doubt." *Klapprott* v. *United States*, 335 U.S. 601, 612 (1949); *Schneiderman* v. *United States*, 320 U.S. 118, 135 (1943); *Baumgartner* v. *United States*, 322 U.S. 665, 670 (1944). Cf. *Perez*

v. *Brownell*, 356 U.S. 44, 47 ftn. 2 (same rule for expatriation cases).

United States v. *Anastasio*, 226 F. 2d 912 (3rd Cir. 1953), cert. den. 351 U.S. 931, illustrates the principle that denaturalization can be based only on suppressions which actually affected the result of the naturalization proceeding. It held that concealment of an arrest record and an illegal entry did not support denaturalization where the true facts were known to the government at the time of naturalization. Similarly, *United States* v. *Kessler*, 213 F. 2d 53, 58 n. 9 (3rd Cir. 1953) stated: "We have found no decision and none has been cited to us where citizenship has been revoked for failure to disclose facts the revelation of which could not have justified refusal of citizenship in the first place."

A like construction has been placed on the analogous statute providing for the deportation of aliens who procure visas by wilful misrepresentations of material facts. Under that statute it must be shown that the alien would have been denied a visa if he had disclosed the true facts; the mere fact that the misrepresentation impeded investigation is not sufficient cause for deportation. *Calvillo* v. *Robinson*, 271 F. 2d 249 (7th Cir. 1959).

Our analysis is also in accord with the tenet that in an action instituted "for the purpose of depriving one of the precious right of citizenship previously conferred we believe the facts and the law should be construed as far as is reasonably possible in favor of the citizen." *Schneiderman* v. *United States*, *supra*, at 122.

The denaturalization requirement that the government must prove that the falsification affected the result is a short step beyond the materiality requirement in prosecutions for perjury or false statements. In those cases the falsehood must be one which was reasonably likely to affect the result. *Weinstock* v. *United States*, 231 F. 2d 699, 701-702 (App. D.C. 1956); *Freidus* v. *United States*, 223 F. 2d 598, 601 (App. D.C. 1955); *United States* v. *Hendrickson*, 200 F. 2d 137, 139 (7th Cir. 1952), cert. den. 345 U.S. 926; *United States* v. *Moran*, 194 F. 2d 623 (2d Cir. 1952), cert. den. 343 U.S. 965.

The denaturalization test thus corresponds to the rule that relief from a final judgment is not available on grounds of fraud unless the fraud had foreclosed a meritorious claim or defense. *White* v. *Crow*, 110 U.S. 183 (1884); *Knox County* v. *Harshman*, 133 U.S. 152, 154 (1890); *United States* v. *Beebe*, 180 U.S. 343, 348 (1901); *Continental National Bank* v. *Holland Banking Co.*, 66 F. 2d 823, 829 (8th Cir. 1933); *Miller Rubber Co.* v. *Massey*, 36 F. 2d 466, 467 (7th Cir. 1930); *Simonds* v. *Norwich Union Indemnity Co.*, 73 F. 2d 412, 415 (8th Cir. 1934), cert. den. 294 U.S. 711; *Restatement, Judgments* (1942) secs. 118, 121, 126. Naturaliztaion is accomplished by a formal judgment entered in a proceeding in which the government is a party and has a right of appeal. Considering the vital interest involved in American citizenship (*Knauer* v. *United States*, 328 U.S. 654, 658-659 (1946)), naturalization judgments should not be more vulnerable than other civil judgments.

The need to restrict the grounds for denaturalization is increased by the fact that denaturalization proceed-

ings are not governed by any statute of limitations or, apparently, any rule of laches. So here petitioner was denaturalized in an action commenced thirteen years after his naturalization on account of concealment of three thoroughly inconsequential arrests.[4] Extension of the grounds for denaturalization automatically expands the utilization of stale evidence and the possibility that relevant defense evidence has disappeared. Thus the stability of naturalized citizenship is doubly undermined.

For all these reasons, it is clear that the Court of Appeals applied an erroneous standard. The court did not hold that petitioner's arrest record, if disclosed, would in itself have justified denial of naturalization. Neither did it find that disclosure of the arrests would have led to the discovery of other facts which would have justified such a denial. It sustained the denaturalization judgment solely on the ground that suppression of the arrest record "foreclosed the Immigration and Naturalization Service and the [naturalizing] district court from making a further investigation as to whether [petitioner] had all the qualifications for citizenship required by the Act of 1906, as a result of which the Service recommended and the district court granted his petition for naturalization" (R. 94-95). But it did not find that the further investigation, if made, would have disclosed disqualifying facts. On the contrary it erroneously stated (R. 94-95):

> "It was not necessary for the district court to determine whether, upon further inquiry prompted by knowledge of the defendant's arrests, he would

[4] In *United States* v. *Costello*, 275 F. 2d 355 (2d Cir. 1960), cert. granted, 362 U.S. 973, denaturalization was decreed in an action instituted 33 years after naturalization.

> have been found ineligible for citizenship. For the test of the materiality of such a concealment and misrepresentation of facts 'is not whether naturalization would have been refused if defendant had revealed the truth, but whether, by his false answers, the government was denied the opportunity of investigating the facts relating to his eligibility.' "

The court's holding that a foreclosure of further investigation is per se sufficient does not even satisfy the materiality requirement for perjury and false statement cases. The court laid down an untenable rule of law that denaturalization is justified for the concealment of any arrests, no matter how remote, for whatever trivial offense, whether under an unconstitutional ordinance, regardless of the disposition of the charge, and though disclosure of the arrests would not have resulted, directly or indirectly, in denial of naturalization.

B. The Government Did Not Prove Either of the Alternatives Necessary to Show that the Misrepresentation Procured Naturalization

Once the correct test, described in the preceding section, is applied, it is clear that the evidence fails to establish that the suppression of the arrest record procured naturalization. In fact the record shows that the arrests were immaterial even under the standards applicable in perjury and false statements prosecutions. Hence the denaturalization judgment can not be supported.

1. The first alternative of the correct test is not met because petitioner's arrests, if they had been disclosed, would not have justified denial of citizenship by the naturalizing court. At the time petitioner was natural-

ized (November 28, 1940), the naturalization statute said nothing about arrests or convictions. The only possible relevancy of the subject to naturalization arose out of the statute's provision that no alien should be admitted to citizenship unless "he has behaved as a person of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States" during the period beginning five years before the petition for naturalization and ending with the naturalization.[5]

The arrests preceded the petition for naturalization, filed June 27, 1940 (R. 81, 92), by more than ten years. The statute, as we have seen, required good character only for the period beginning five years before the petition.

"The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct." *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 241 (1957). In the case of one of the arrests, petitioner was discharged. In another, the charge was "nolled" on appeal from a $25.00 fine. The disposition of the third arrest is unclear.

Obviously none of the arrests involved accusations of moral turpitude. Two of the arrests, including the one of unknown disposition, were for violations of city ordinances or regulations which clearly were uncon-

[5] Sec. 4, subd. Fourth, of the Naturalization Act of June 29, 1906, as amended by Act of March 2, 1929 (34 Stat. 598, as amended by 45 Stat. 1513). The superseding Nationality Act of 1940 did not become effective until January 13, 1941. 54 Stat. 1154.

stitutional on their face.[6] The third arrest, for "general breach of peace," was the one in which the $25.00 fine was nullified when the case was "nolled" on appeal (R. 65-68).

In short, the arrests were remote trivialities, which were irrelevant to the statutory requirement that an applicant for naturalization must have behaved as a person of good moral character during the period beginning five years before the petition for naturalization.

2. The second alternative of the correct test is not met because there is not an iota of evidence that if petitioner had disclosed the arrests this would have resulted in an investigation which would have discovered facts making him ineligible for naturalization. The only evidence as to what might have happened if the arrests has been disclosed is the following bit of testimony of the naturalization examiner, who testified as a government witness (R. 32-33):

> "Q. Now, if at the time you made your preliminary examination of this petitioner—what was the custom and practice if the petitioner answered yes with regard to the question, 'Have you ever been arrested'?

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[6] The Court of Appeals was mistaken in its observation (R. 96) that the texts of the ordinances were not before the District Court. The ordinances were received at the trial as Government Exhibit 5 (R. 68-70). As to the invalidity of the ordinance prohibiting distribution of handbills in a public street, see *Jamison* v. *Texas*, 318 U.S. 413 (1943) and *Talley* v. *California*, 362 U.S. 60 (1960). As to the invalidity of the other ordinance, prohibiting making a speech "in New Haven Green" without "special authority," and providing no standards for dispensing such authority, see *Kunz* v. *New York*, 340 U.S. 290 (1951).

"A. Well, I would note whatever record he might furnish me, and the petitioner would then go ahead with the filing of his petition with that record there. It would later be verified and checked, and the Designated Examiner would make his recommendation on the basis of what the record showed, and the court, of course, would do the same on that. But the facts would be known to both the Designated Examiner and the court.

"Q. Now, you say that if any arrests were disclosed that it was the custom and practice at that time to verify them. Will you tell us what the procedure was?

"A. Well, the office procedure, when the petition had been filed they would, if there were any items that required further investigation, it would go to the investigative unit and they would take it up from there.

"Q. Well, now, if the—

"The Court: Wait a minute. 'Take it up from there'?

"The Witness: They would make such investigation—that is, if the petitioner said he arrested (*sic*) at a certain time and place, they would check with the authorities there to ascertain what the results of that—whether the full facts were stated."

According to this testimony, the most a further investigation would have disclosed were the facts in the present record concerning the arrests. These, as we have seen, would not have justified a refusal to naturalize petitioner. There is no evidence that any additional facts would have been discovered, much less additional facts which would have shown that petitioner was ineligible for citizenship.

Accordingly, there is no basis for concluding that the suppression of petitioner's arrest record procured or was material to naturalization. Hence the statutory re-

quirement for denaturalization on account of concealment or misrepresentation of the arrests does not exist.

CONCLUSION

The judgment below should be reversed and the case remanded to the Court of Appeals.

Respectfully submitted,

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No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1960

PETER CHAUNT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
MALCOLM RICHARD WILKEY,
Assistant Attorney General,
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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 22

PETER CHAUNT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (R. 91-98)[1] is reported at 270 F. 2d 179. The findings of fact and conclusions of law of the district court (R. 80-90) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1959 (R. 98-99). The petition for a writ of certiorari was filed on December 16, 1959, and was granted on February 29, 1960 (R. 99; 362 U.S.

[1] "R." refers to the printed record prepared under the supervision of the Clerk of this Court. The original record, on file with the Clerk, is in ten numbered volumes. References thereto will be indicated by "Tr.", preceded by the volume number.

901). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a denaturalization judgment may be based on a ground alleged in the complaint but not referred to in the affidavit of good cause required to be filed with the complaint, where the affidavit does refer to a ground which shows that the action was not irresponsibly brought.

2. Whether an applicant for naturalization who falsely states, in reply to a specific question in the naturalization proceedings, that he has never been arrested, and who thereby blocks an avenue of inquiry by the government into the question of his moral character and eligibility for citizenship, conceals and falsifies a material fact within the meaning of the statute directing the revocation of citizenship procured through this means.

3. If either of the foregoing questions is answered favorably to petitioner, whether the judgment of denaturalization should be sustained on the basis of petitioner's fraudulent concealment of his Communist Party membership.

STATUTE INVOLVED

Section 340(a) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 260, as amended, 68 Stat. 1232,[2] 8 U.S.C. 1451(a), provides in pertinent part:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit

[2] The amendment substituted "United States attorneys" for "United States district attorneys" in the quoted excerpt.

showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title [8 U.S.C. 1421(a), designating the courts having jurisdiction to naturalize] in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation * * *.

STATEMENT

1. Petitioner, a native of Hungary, came to the United States in 1921 at the age of 22 (R. 77). On November 28, 1940, he was admitted to United States citizenship by a decree of the United States District Court for the Eastern District of New York (R. 81).

On April 21, 1955, the government filed a complaint[3] (R. 15-23) in the United States District Court for the Southern District of California, pursuant to Section 340(a) of the Immigration and Nationality Act, *supra*, charging that petitioner procured his naturalization through the concealment of material facts and the making of willful misrepresentations, and asking that the order admitting him to citizenship be revoked and set aside. Specifically, the complaint alleged that petitioner, in the proceedings which led to his naturalization, intentionally concealed (1) that he then was,

[3] This was a second amended complaint. The original complaint (R. 1-6) was filed on October 1, 1953.

and since about 1926 had been, an active member and officer of the Communist Party of the United States, and (2) that he had been arrested for and charged with certain described offenses in New Haven, Connecticut, during the years 1929 and 1930[4] (R. 16-17). The complaint further alleged that petitioner falsely represented in the naturalization proceedings (1) that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order," whereas in truth he then was, and since about 1926 had been, an active member and officer of the Communist Party, and (2) that he had never been arrested for or charged with the violation of any law of the United States or any state or of any city ordinance or traffic regulation, whereas in fact he had been arrested for and charged with the offenses referred to in the concealment portion of the complaint (R. 19-21).

Attached to the complaint was an affidavit by an attorney of the Immigration and Naturalization Service (R. 23-26) stating that it appeared from the records of the Service that in the naturalization proceedings petitioner had falsely stated under oath that he had never belonged to any Communist, Nazi or Fascist organization and that the only organization to which he belonged was the Fraternal Benefit Society of the International Workers Order, whereas in truth, it was said, petitioner was at the time of his naturalization, and since about 1926 had been, an active member and officer of the Communist Party (R. 24). The affidavit contained no allegation or representation pertinent to

[4] The nature of these offenses is referred to *infra*, pp. 9-10.

the charge of the complaint that petitioner had concealed and falsified his arrest record.

On November 7, 1955, petitioner filed an answer (2 Tr. 312-315), denying the principal allegations of the complaint and asserting that the Immigration and Naturalization Service had not "reasonably relied solely" on the facts supplied by him in the naturalization proceedings in failing to make a full and proper investigation of his qualifications for citizenship.

2. The evidence adduced at the denaturalization trial may be summarized as follows:

a. The concealments and misrepresentations charged: On November 8, 1939, petitioner filed with the Immigration and Naturalization Service his "Preliminary Form for Petition for Naturalization" (G. Exs. 2a and 2b,[5] R. 71). Question 30 on this form read (G. Ex. 2b, R. 71):

> 30. Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?.....
> If so, give full particulars.....
> .....

In the executed form as filed by petitioner, the question was answered "No" and the space for "particulars" was blank (*ibid.*)

On June 27, 1940, petitioner appeared under oath before Calvin Derrenger, a preliminary examiner for

[5] These exhibits consisted of the front and back sides, respectively, of this form. Government Exhibits 2f and 2g (discussed *infra*) were, similarly, the front and back sides of another pertinent document, the triplicate copy of petitioner's (final) petition for naturalization (R. 73).

the Service, whose purpose it was, in accordance with "standard practice and procedure", to go over each item on the preliminary form that the applicant for naturalization had either "filled out or failed to fill out" and "ask him specifically every question that was on [the] form and note his answers or make any corrections or changes that were needed in it" (R. 27-28, 31; 5 Tr. 39-40). It was his custom and practice, Derrenger testified, to go into the matter of arrests "very thoroughly to make sure that they [applicants] gave a complete answer." To indicate that the question pertaining to arrests had been orally asked, and that the answer which appeared on the form was the answer which the applicant had orally given, the practice was to "circle the answer that [appeared on the form], initial it and date it" (R. 31). On petitioner's form, the answer "No" to the question concerning arrests was circled, and above the circle, in Derrenger's handwriting, were his initials ("CD") and the date ("6-27-40") (R. 31-32; G. Ex. 2b, R. 71). This signified, Derrenger testified, that he "asked that question and that is the answer that was given to me" (R. 31-32).[6]

If an applicant answered "yes" to the question concerning arrests, Derrenger testified, the examiner would

[6] Derrenger had no independent recollection of petitioner or of the occasion when petitioner appeared before him (5 Tr. 16, 28-29). His testimony in this instance, as well as his other testimony, was based on the established procedure in conducting preliminary examinations, his own custom and practice, and notations, markings and remarks which he placed on petitioner's various application papers (see, *e.g.*, R. 28-32; G. Exs. 2a, 2b, R. 71; G. Exs. 2f, 2g, R. 73). The genuineness of these documents was stipulated by counsel (5 Tr. 11).

note on the form whatever information the applicant furnished, and the matter would in due course "go to the investigative unit" of the Service for "further investigation" (R. 32-33). This would include "check-[ing] with the authorities" at the places where the arrests occurred "to ascertain * * * whether the full facts were stated" (R. 33).

In addition to reviewing with petitioner his answers to the questions on the preliminary form of his petition, Derrenger, at the same interview and in accordance with his usual practice, typed onto the back of another document, the triplicate copy of petitioner's final petition for naturalization (G. Exs. 2f and 2g, R. 73), in a space headed "Result of Examination", various items of information orally supplied him by petitioner (while still under oath) in response to further questions (R. 28-31; 5 Tr. 10, 13-16). One of the notations appearing in this space on petitioner's form, typed and initialed by Derrenger, was the following (G. Ex. 2g, R. 73):

> Organization—Fraternal Benefit Society of Internation [*sic*] Workers Order, where applicant is employed—no others. ed

Derrenger knew from this, he testified, that he had asked petitioner to name all of the organizations to which he belonged, and that petitioner had replied that he belonged to the named organization "and to no other[s]" (R. 29-30; 5 Tr. 32-33).

Derrenger also asked petitioner during the interview "whether he believed in Nazism, Communism or Fascism," and petitioner responded in the negative

(R. 28-29). Based on this answer, and on his replies to other questions, Derrenger concluded that petitioner was attached to the principles of the Constitution—a statutory requirement for naturalization[7]—and recorded that conclusion on petitioner's form by the typed symbol "AC" (R. 28-29; 5 Tr. 17; G. Ex. 2g, R. 73). If petitioner's answer to the question had been in the affirmative, Derrenger said, he would have indicated on the form (by the symbol "NAC") that petitioner was not in his judgment attached to the principles of the Constitution (R. 28).

Also appearing on this form was the notation "NCR anywhere" (G. Ex. 2g, R. 73). This meant "no criminal record anywhere," Derrenger testified, and indicated that he "asked the petitioner if he had any record of arrests anywhere and his answer was that he had 'none'" (R. 29).

Following his examination by Derrenger, petitioner appeared under oath before Reuben E. Wilson, a "designated examiner" (an officer "specifically designated by the judge of the court to conduct the preliminary hearings on these petitions"), for the "initial hearing" on his citizenship application (5 Tr. 45, 50-52). This official, who "would conduct practically the same type of examination that was conducted by the preliminary examiner," had his own "method of noting the results of that hearing" (5 Tr. 51). It appears from the physical evidence (G. Ex. 2g, R. 73), as interpreted and explained by Derrenger (who was familiar with Wilson's system of notations, see 5 Tr. 52-64), that petitioner repeated before Wilson his statements that he had never been arrested and that the only or-

[7] 8 U.S.C. (1934 ed.) 382; now 8 U.S.C. 1427(a).

ganization to which he belonged was the Fraternal Benefit Society of the International Workers Order (5 Tr. 52-54, 58-60). Wilson, like Derrenger, came to the conclusion, as a result of his examination, that petitioner was attached to the principles of the Constitution. He indicated that conclusion on the petition form by the symbol "AC" (5 Tr. 60-63; G. Ex. 2g, R. 73), and recommended to the court that the petition be granted (5 Tr. 63-64).

b. Petitioner's arrest record: Contrary to his representations in the naturalization proceedings, petitioner had the following record of arrests:

On July 30, 1929, he was arrested and charged with distributing handbills in a public street, in violation of a New Haven, Connecticut, city ordinance (G. Ex. 1-A, R. 53-56; R. 69-70). He pleaded not guilty and was acquitted (R. 55).

On December 21, 1929, he was arrested and charged with making "an oration, harangue, or other public demonstration in New Haven Green, outside of the churches", in violation of the "Charter & Ordinances" of New Haven (G. Ex. 1-B, R. 58-61; R. 70). A demurrer to the charge was overruled (R. 60; G. Ex. 1-C, R. 63-64) and petitioner pleaded not guilty (R. 60). There is some confusion in the record as to the final disposition of the case by the court.[8]

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[8] The denaturalization complaint described the "[d]isposition" of this case as follows: "plea—not guilty., Found J.S." (R. 17, 20). The district court, in its findings of fact, used similar language (R. 82, 86). The original record of the charge and its disposition, however, reads (R. 60):

Plea,	Not Guilty	Found	Guilty
		J.S.	

The meaning of "J.S." is uncertain. It may possibly mean "Judgment Suspended."

On March 11, 1930, he was arrested and charged with "General Breach of the Peace" (G. Ex. 1-D, R. 65-65c). He was found guilty, sentenced to pay a fine of $25, and ordered to stand committed until the judgment was satisfied (R. 65c). These proceedings were in the New Haven City Court. It appears that an appeal was taken to the Criminal Court of Common Pleas of New Haven County (R. 65c; G. Ex. 1-E, R. 66-67); that in the April, 1930, Term of the latter court an information was filed charging petitioner with having on March 11, 1930, "disturb[ed] and br[oken] the peace by tumultuous and offensive carriage, noise and behavior, against the peace, of evil example, and contrary to the Statute in such case made and provided" (apparently a reference to the same offense with which he was charged in the New Haven City Court) (R. 67); and that on April 7, 1930, the charge was "Nolled" (R. 68).

c. Petitioner's Communist Party membership and activities: The following is uncontradicted evidence of petitioner's active membership in the Communist Party from a time antedating and spanning the dates of his application for and receipt of naturalization (June 27, 1940, and November 28, 1940, respectively):

In the winter of 1930-1931, petitioner introduced himself to a group of Young Communist League members in Buffalo, New York (among them, government witness Kenneth Kalke) as "Comrade Chaunt," the "new district organizer of the Communist Party" (R. 33-34; 5 Tr. 113-115).[9] Kalke thereafter received in-

[9] The area covered by the Buffalo District of the Communist Party (District No. 4), in 1931, included all of western and part of central and south central New York and a small portion of northwest Pennsylvania (R. 35-36).

structions from petitioner (5 Tr. 115). Three weeks following their introduction, petitioner told Kalke he was to do "agitational work" on behalf of the Party at a specified place (5 Tr. 116). In March 1931, at a district convention of the Young Communist League in Rochester, New York, petitioner, after being introduced to the convention as "Comrade Chaunt, the district organizer of District No. 4 [the Buffalo district] of the Communist Party" (R. 35), pointed out to the delegates the important part they played in recruiting young workers into the Young Communist League and eventually into the Communist Party, and told them that, as members of the Young Communist League, it was their duty to fight for the interests of the Soviet Union (R. 34). In April 1931, Kalke was present at a Buffalo district committee meeting of the Young Communist League and petitioner told him he was being sent to Syracuse, New York, as a "colonizer" for the League in that city (5 Tr. 124-127, 129-130). Later in 1931, petitioner ordered Kalke to go to Niagara Falls and communicate with League and Party members in connection with certain "protest meetings" (5 Tr. 131-132).

In the summer of 1931, petitioner taught a course in the basic principles of Leninism at a Communist Party training school in Hamilton, Ontario (R. 40-44). Government witness John Lautner, at that time a Party member, was the director of this school (R. 40-41). Petitioner was known to Lautner as the Party's district organizer for the Buffalo district (R. 40-41, 45). Though Lautner had not previously met petitioner, petitioner was already known to him as a Party leader

(R. 44). When Lautner first joined the Communist Party, in 1929, he knew petitioner to be the Party's district organizer in Connecticut (R. 44-45; 6 Tr. 287). Lautner, who from 1936 to 1940 was himself a district organizer of the Party (for the West Virginia district)[10] (6 Tr. 289), testified that the "district organizer" "was the representative of the Central Committee" of the Party in that particular district and took orders from that body (6 Tr. 338; 7 Tr. 397-398). "His voice and authority was the authority of the Central Committee" (6 Tr. 338). To be a district organizer, one had to "have a thorough understanding and knowledge of the principles of Marxism and Leninism, the ideology, the philosophy, and also the application of this ideology and philosophy in the day-to-day activities of the Communist Party" (6 Tr. 338-339).

In or about 1933, petitioner became the Party's district organizer for the area in and around St. Louis, Missouri (R. 39-40). On July 3, 1933, in Columbia, Missouri, government witness George Duemler was presiding at a convention of a group known as the Continental Congress of Workers and Farmers when petitioner marched down the center aisle of the convention hall at the head of a group of people demanding that "credentials [be] furnished to the Communist Party" (R. 36-37, 38-39). In February 1934, petitioner was the Communist Party representative at a protest meeting concerning Austria in the office of the

[10] Later, from 1947 to 1950, Lautner headed the Party's New York State Review Commission (a disciplinary body) and during the last three years of that period was a member of its National Review Commission (6 Tr. 290-291).

Austrian consul in St. Louis (6 Tr. 218-219). During this period (1933-1934), according to Duemler, petitioner was "the one person in complete authority so far as the Communist Party was concerned in that area" (R. 36, 40). So far as the public was concerned, "the Communist Party was Chaunt and Chaunt was the Communist Party" (6 Tr. 236).

In 1936 or 1938, Lautner met petitioner at the national convention of the Communist Party, petitioner being present as the head of the Missouri delegation (R. 44, 45; 7 Tr. 382-383). Lautner continued thereafter to meet petitioner from time to time at Party national conventions and National Committee meetings (R. 44). During the 1930's, according to Lautner, petitioner was well known in the "leading circles" of the Party, *i.e.*, the "[h]igh functionaries * * * and so-called old-timers" (7 Tr. 449-450).

From 1939 to 1942, petitioner was on the educational staff of a training school run by the International Workers Order (IWO), a "multinational organization" which was controlled and dominated by the Communist Party (7 Tr. 383-388). In the summer of 1940, Lautner discussed with petitioner the progress at this school of a student whom Lautner had sent to it from West Virginia, where he (Lautner) was the Party's district organizer (6 Tr. 289; 7 Tr. 383-386). In the spring of 1941, Lautner and other Party members "were sent into that organization [the International Workers Order] by the Communist Party * * * to give more political content and strength and guidance" to it (7 Tr. 387-388). Petitioner was the IWO "assistant school director" at the time (7 Tr. 388). Between

that time and November 1942, Lautner saw petitioner on numerous occasions, sometimes daily, as they worked "out of the same office" and for "the same organization" (7 Tr. 386).

The last time Lautner saw petitioner was in Cleveland, Ohio, in the winter of 1945-46 (R. 45-46). Lautner, who was then the national secretary of the Hungarian Bureau of the Communist Party, had gone to Cleveland to organize a local branch of this Bureau (R. 46; 6 Tr. 332). Petitioner, who attended the meeting as district representative of the Party's Ohio District (R. 46), emphasized to those present the necessity of eradicating all vestiges of "reversionism of the Browder type" from the minds of the Hungarian Party membership in Cleveland and of organizing a bureau that would give leadership to Hungarian Party members and sympathizers in the area (R. 46-47).

In addition to the foregoing testimony, numerous documents were introduced at the trial to establish petitioner's activity and official status in the Communist Party. These included Party membership books for 1928 (G. Ex. 4, 6 Tr. 193-194, 197, 327), 1930 (G. Ex. 5, 6 Tr. 194, 197, 326-327) and 1931 (G. Exs. 6 and 7, 6 Tr. 194-195, 197, 326-327) signed by petitioner as district organizer (6 Tr. 192-196), and articles from the Party organ, the *Daily Worker*, describing petitioner's Party activities and status (G. Exs. 8-13, 7 Tr. 406-416).

Petitioner, called as a witness by the government, declined to answer any question other than to state that he was the defendant in the action (8 Tr. 532-538). He did not testify in his own behalf.

3. At the conclusion of the trial, the district court

made findings of fact (R. 80-88) and conclusions of law (R. 88-89), and entered a judgment canceling petitioner's naturalization (R. 90). The court found that there was "clear, unequivocal and convincing evidence" establishing "beyond all reasonable doubt" that petitioner's naturalization had been procured through the deliberate concealment of material facts and the making of willful misrepresentations (R. 81, 84). Petitioner, the court found, had concealed (1) that prior to and at the time of filing his petition for naturalization (and at the time of his naturalization) he had been and was "an active member, officer and full-time paid functionary of the Communist Party of the United States", and (2) that he had been arrested and charged with the violations of law set forth in the denaturalization complaint (R. 81-82). These facts were material, the court held, because, as a consequence of their concealment, the Immigration and Naturalization Service recommended to the naturalization court that it grant petitioner's naturalization petition without making a full and proper investigation as to whether petitioner had all of the requisite qualifications for citizenship, including good character and attachment to the principles of the Constitution (R. 82-83). The misrepresentations which the court found petitioner to have made were, *inter alia*, that he belonged to no organization other than the "Fraternal Benefit Society of International Workers Order" and did not believe in Communism, Fascism or Nazism (whereas in fact he had been an active member and officer of the Communist Party since approximately 1926), and that he had never been arrested or charged with the violation of any federal or state law, city ordinance, or traffic regu-

lation (whereas in fact he had been arrested and charged with the offenses described in the complaint) (R. 84-86). These and other misrepresentations found to have been made, the trial court held, had (like the concealments) resulted in petitioner's being admitted to citizenship without a proper investigation of his qualifications therefor (R. 87-88).

The court of appeals, finding that petitioner's concealment of, and misrepresentations with respect to, his arrest record amply supported the judgment of the district court, unanimously affirmed, without passing upon the other findings of the district court (R. 91-98).

SUMMARY OF ARGUMENT

I

The court of appeals correctly affirmed the judgment of denaturalization on the basis of petitioner's concealment and false denial of his arrest record.

A. The fact that the affidavit of good cause did not refer to this ground of denaturalization did not bar its inclusion in the complaint, which afforded petitioner full notice.

1. Preliminarily, we point out that the argument that the complaint cannot go beyond the affidavit was abandoned by petitioner in the court of appeals, and he points to no reason why he should be permitted to renew it in this Court. Nor is the issue one which the Court should consider *sua sponte*.

2. The contention is unsound in any event. The purpose of the requirement of a good-cause affidavit is to protect the defendant from ill-considered action which

might damage his reputation and standing in the community. Where, as here, an affidavit which fulfils this purpose is in fact filed, to hold that a ground not set forth in the affidavit cannot be alleged in the complaint or relied upon by the court in decreeing denaturalization would unjustifiably emphasize the significance of the affidavit and in effect make it perform the function of the complaint. As long as a defendant is secured against the possibility of governmental irresponsibility by the requirement that at least one good ground of denaturalization be set forth in the affidavit, the statutory mandate is satisfied.

B. Petitioner's arrest record was a material fact within the meaning of the denaturalization statute.

1. The test of materiality under the statute is not whether truthful answers would in themselves have justified denial of citizenship, nor whether disclosure of the true facts would assuredly have led to discovery of other facts which would have justified denial of citizenship. The test is whether the falsification had the effect of precluding the government from pursuing an avenue of investigation which might have resulted in the applicant's failure to obtain citizenship.

2. The same standard has been applied in determining the materiality of false statements made in visa applications and other documents used by aliens to procure admission into the country, *viz.*, the tendency of the misrepresentation to forestall inquiry as to the applicant's eligibility to enter. Thus, it has been pointed out that a rule which would permit an alien to make a false statement in his application for a visa in order

to avoid the raising of a substantial question as to his eligibility to enter the country and then, if he is caught in the false statement after having successfully choked off investigation, to try out his eligibility just as if he had made no false statement, would be an invitation to false swearing. The same would be true in respect to false statements in naturalization petitions.

Again, it has been pointed out that a rule under which a false representation in a visa application would be deemed material only when inquiry resulting from the true facts would clearly have resulted in the refusal of the visa "would force the courts into the realm of conjecture and speculation, in trying to make a decision only the proper authorities could have capably made." *Landon* v. *Clarke,* 239 F. 2d 631, 635-636 (C.A. 1). Similarly, under such a rule as applied to naturalization applications, the court of denaturalization would be required to speculate as to what disposition the court of naturalization would have made of the application for citizenship on the basis of facts which might have been uncovered by an investigation which was in fact never made because of the applicant's false statement.

3. Our view as to the meaning of materiality under the denaturalization statute is also supported by the materiality test applicable in perjury cases, *viz.*, whether the false testimony has a natural effect or tendency to influence or impede the investigating body in pursuing its investigation. Under this test, one who has given false testimony will not be heard to say that his testimony was not material merely because the jury or other body before which it was given would probably

have reached the same verdict or result had the falsehood not been told.

4. The question asked petitioner concerning his prior arrests was pertinent to the issue of his moral character. The courts have repeatedly held that false answers to questions concerning an alien's criminal record, by shutting off further inquiry into the alien's moral character, constitute a fraud upon the naturalization court and are valid grounds for denaturalization. Even though (as here) the misrepresentation concerns arrests occurring before the five-year statutory period during which good character must be shown, their concealment is none the less material since they relate to the person's moral character in general and the concealment prevents inquiry directed specifically to his moral character during the statutory period.

5. Petitioner's assertion that two of the ordinances under which he was arrested were unconstitutional is irrelevant. A naturalization applicant who is asked if he has ever been arrested is required to disclose his arrests, whether the statutes or ordinances under which he was charged were valid or invalid. In any event, the argument based on the alleged unconstitutionality of two of the ordinances in question does not reach the third arrest, for "general breach of peace"; the legality of that arrest is not questioned.

6. Even if nothing adversely reflecting on petitioner's private moral character had been discovered as a result of the investigation which would have been made had he not concealed his arrest record, it does not fol-

low that his petition for naturalization would have been unaffected. His membership and leadership in the Communist Party might well have been discovered, and, if it had been, it is clear from the evidence that the Immigration and Naturalization Service would have recommended against the granting of his petition on the ground that he was lacking in attachment to the principles of the Constitution.

II

The judgment of denaturalization is independently sustained by petitioner's fraudulent concealment of his Communist Party membership.

This ground, adopted by the district court, was not reached by the court of appeals, and need not be reached by this Court if the Court agrees with the government on Point I. If, however, the Court disagrees with the government on Point I, petitioner's concealment of his Party membership presents an alternative basis for sustaining the judgment below.

Although we recognize that this Court commonly remands to the court of appeals for consideration of issues pretermitted by that court, the practice is far from an unvarying one, and there are persuasive reasons for believing that this Court should finally dispose of this case now.

The evidence that petitioner was a member of the Communist Party and an active and vigorous exponent of Communism is overwhelming and uncontradicted. Indeed, petitioner's argument to the court of appeals on this phase of the case was strictly a legal one, *i.e.*, that this issue is controlled by this Court's decisions in

Nowak v. *United States*, 356 U.S. 660, and *Maisenberg* v. *United States*, 356 U.S. 670. He has made no effort to challenge the evidentiary basis of the district court's findings as distinguished from their legal significance. In these circumstances, the question here narrows to the legal issue whether this case is controlled by *Nowak* and *Maisenberg*, or whether it is significantly different from those cases. This issue may appropriately be determined by this Court at the present juncture.

This case, in our view, cannot be deemed to fall within *Nowak* or *Maisenberg*. In each of those cases, the charge of fraud stemmed from the defendant's allegedly false answer to the second part of question 28 on the naturalization form ("Are you a believer in anarchy? . . . Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? . . ."). The defendant's negative answer to the second part of this question, the Court held, was not shown to be false merely on the basis of proof that he was a member of the Communist Party and that the Party advocated the overthrow of existing government, because the Court concluded that the second part of the question could well be interpreted as requiring disclosure only of membership in anarchistic organizations. The instant case does *not* turn on the clarity of question 28, for petitioner was *also* asked, in his naturalization proceedings, to name all of the organizations to which he belonged and to state whether he believed in Communism. The inescapable import of his responses stating that the only organization to which he belonged was a fraternal benefit society which

he named and that he did not believe in Communism was that he was not a Communist or a Communist Party member. The facts are to the contrary.

The responses were not only false; they were material. For, if petitioner had revealed his Communist Party membership, a path of significant further inquiry would have been opened up. The meaningfulness of his membership and the degree of his commitment to Party tenets and ideology could then have been explored. If such further inquiry uncovered (as it doubtless would have) the fact that petitioner was, and had been for years, not only an active and zealous Party member, officer, and full-time functionary, but one of the leaders of the Party, his suit for citizenship, in which he bore the burden of proving his attachment to the principles of the Constitution, obviously might have failed. His concealment of his Party membership, precisely because it forestalled such inquiry, constituted the concealment of a material fact.

ARGUMENT

The district court based its judgment of denaturalization on petitioner's concealment and false denial of (1) his arrest record and (2) his Communist Party membership. The court of appeals found it unnecessary to consider the second of these grounds because it concluded that the first ground amply supported the judgment. Petitioner challenges the sufficiency of the ground which the court of appeals considered (Br. 8-19); as to the other ground, petitioner suggests that, should he prevail here in the limited challenge he makes, the cause be remanded to the court of appeals for further consideration (Br. 5, fn. 2).

We shall argue, *first*, that the court of appeals correctly affirmed the district court's judgment on the ground which it considered, and, *second*, that in all events the judgment should be sustained on the basis of the unequivocal and uncontradicted evidence demonstrating petitioner's concealment of his Party membership.

I

The Court of Appeals Correctly Affirmed the Judgment of Denaturalization on the Basis of Petitioner's Concealment and False Denial of His Arrest Record

Petitioner's challenge to the denaturalization judgment, in so far as that judgment rests on the finding that he concealed and falsified his arrest record, is twofold. He contends (1) that this was not a valid basis of judgment because it was not set forth in the affidavit of good cause filed with the denaturalization complaint (Br. 8-10), and (2) that the fact concealed and falsified, *i.e.*, the record of his arrests, was not a "material" fact within the meaning of Section 340 (a) of the Immigration and Nationality Act (*supra*, pp. 2-3) (Br. 11-19). Neither argument, we submit, is sound.

A. *The fact that the affidavit of good cause did not refer to petitioner's concealment and false denial of his arrest record was not a bar to his denaturalization on that ground*

1. Preliminarily, we point out that the claim that the affidavit of good cause was deficient, although raised in the district court,[11] was not pursued in the

[11] Even in the district court, it is doubtful if petitioner adequately preserved the point. In that court, following the filing of the original

court of appeals. It was not mentioned before that court, either by brief or orally,[12] and the court's opinion is, of course, silent on the subject. It should accordingly be deemed to have been waived or abandoned. Cf. *Barr* v. *Matteo*, 244 F. 2d 767, 769 (C.A. D.C.), reversed on other grounds, 355 U.S. 171; see also *Hegeman Farms Corporation* v. *Baldwin*, 293 U.S. 163, 168; *Eastman Company* v. *Southern Photo Company*, 273 U.S. 359, 369; *Home Benefit Association* v. *Sargent*, 142 U.S. 691, 694-695; *Whiting* v. *Bank of the United*-

complaint (R. 1-6 (see fn. 3, *supra*, p. 3), petitioner filed a motion to dismiss (R. 10-12) setting forth numerous grounds for such requested action. One of the grounds relied on was that "one of the causes of action sought to be alleged in the complaint is not supported by an affidavit of good cause as required by section 340(a) of the said Act" (R. 11-12)—in other words, the point now urged. The motion was denied (R. 13-14). Thereafter, an amended complaint (1 Tr. 105-115) and, later, a second amended complaint (R. 15-23)—the latter being the one on which trial was held—were filed. In each instance petitioner renewed his motion to dismiss (1 Tr. 154-156; 2 Tr. 268-270), urging on each occasion the same grounds on which he relied in his original motion to dismiss, *except* that the point now urged was not repeated. In these circumstances, we think that petitioner must be taken to have abandoned the point in the district court. His argument that he "was under no obligation, and it would have been fruitless, to raise again before the trial court the same objection which the trial court had already overruled" (Reply to our brief in opposition to certiorari, p. 2) overlooks the fact that he did renew his other previously rejected grounds in his motions to dismiss the amended and second amended complaints.

[12] One of the "points" which petitioner, in his "Statement of Points on Appeal" (filed with his designation of the record on appeal) said he intended to raise on appeal was (No. 8) "[t]hat the affidavit of cause filed herein is not a sufficient affidavit to meet the requirements of the governing statute, Sec. 340 of the Immigration & Nationality Act of 1952." There was no allegation, however, as to the respects in which the affidavit was deemed insufficient, and even the general allegation was omitted from the "Statement of Points" in the brief. Cf. *Barr* v. *Matteo*, 244 F. 2d 767, 769 (C.A. D.C.), reversed on other grounds, 355 U.S. 171.

States, 13 Pet. 6, 14; and see Rule 18(2)(d) of the Rules of the Court of Appeals for the Ninth Circuit.[13]

To be sure, this Court has the power to notice errors which were not called to the attention of the court of appeals; but this power, like the power to notice errors not brought to the attention of the trial court, should be exercised only "[i]n exceptional circumstances," where the errors are "obvious" or "otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States* v. *Atkinson,* 297 U.S. 157, 160, and cases cited; cf. *Barr* v. *Matteo, supra.* We argue below (*infra,* pp. 25-27) that the district court did not err. But even if we are wrong, the error, we submit, was neither obvious nor such as to "seriously affect the fairness, integrity or public reputation of judicial proceedings." Petitioner's abandonment of the point in the court of appeals should therefore preclude him from raising it now.

2. Petitioner's contention is unsound on its merits. The basic purpose underlying the requirement of a good-cause affidavit is "to protect those proceeded against from ill-considered action" (*Nowak* v. *United States,* 356 U.S. 660, 662) which might cause damage to their reputation and standing in the community. *United States* v. *Zucca,* 351 U.S. 91, 99-100. The defendant, in other words, is entitled to the assurance that the government is not initiating such a proceeding in reckless disregard of his rights or reputation,

[13] This rule requires, *inter alia,* that the brief for the appellant in all cases contain "a specification of errors relied upon which * * * shall set out separately and particularly each error intended to be urged." Cf. *Barr* v. *Matteo, supra,* 244 F. 2d at 769.

but is proceeding only after a careful evaluation of facts which it is willing to put to the test of judicial scrutiny. *Ibid.* It is apparent from its face—and petitioner makes no contrary claim here—that the affidavit in this case (R. 23-26) satisfies this statutory purpose. It describes petitioner's Communist Party membership and the concealment and misrepresentation of such membership in adequate detail. In short, as the affidavit stands, it sets forth "evidentiary matters showing good cause for cancellation of citizenship" (*United States* v. *Zucca, supra,* 351 U.S. at 99.)

Petitioner's argument is that the affidavit limits the scope of the complaint and that a ground not set forth in the affidavit cannot be alleged in the complaint or relied upon by the court in decreeing cancellation of citizenship (Br. 10). We see no basis for such a stringent requirement.

First, petitioner's view equates the evidence that must be set forth in the affidavit with that which is required to support the ultimate judgment of denaturalization. Just as the standard for determining whether enough evidence exists to warrant arrest or search under the Fourth Amendment ("probable cause") is different from the standard of proof required for conviction (see *Brinegar* v. *United States,* 338 U.S. 160, 175-176), so too the evidence required to be set forth in the affidavit is not the same as that required to support the denaturalization decree. To designate the affidavit as the depository of each and every charge which must be proved would be to render the complaint all but meaningless. Cf. *Schneiderman* v. *United*

States, 320 U.S. 118, 159-160, where this Court refused to consider as part of the charge an allegation made in the affidavit of good cause which was not included in the complaint.

Secondly, the defendant would gain no meaningful protection by a rule requiring that all the grounds asserted in the complaint be included in the affidavit and barring any different reason from being used as an additional charge in the complaint. The affidavit gives him protection against irresponsible action in instituting a denaturalization suit; the complaint gives him notice of what he must defend against. He is thus fairly protected. "From such an affidavit [of good cause] an experienced judge should be able to detect a United States attorney's reckless categorization or noncritical selection of candidates for denaturalization, and we think that is all Congress intended by the procedural safeguard." *United States* v. *Minerich*, 250 F. 2d 721, 725 (C.A. 7). We submit that, as long as a defendant is secured against governmental irresponsibility by the requirement that at least one ground evincing good cause be stated in the affidavit, the statutory mandate is satisfied.

B. *Petitioner's arrest record was a material fact because his concealment of it blocked an avenue of inquiry which might have resulted in his failure to obtain naturalization*

Petitioner further contends (Br. 11-19) that his concealment and false denial of his arrest record were not material within the meaning of the denaturalization statute (*supra*, pp. 2-3) because there was no show-

ing that he would have been denied naturalization if he had disclosed his arrests.

1. The test of materiality under the statute is not, however, as petitioner contends, whether truthful answers "would in themselves have justified denial of citizenship" (Br. 11), or whether "[d]isclosure of the true facts would have led to discovery of other facts which would have justified denial of citizenship" (*ibid.*). The proper standard is whether the falsification had the effect of precluding the government from pursuing an avenue of investigation which might have resulted in the applicant's failure to obtain citizenship. *United States* v. *Montalbano*, 236 F. 2d 757, 759-760 (C.A. 3), certiorari denied *sub nom. Genovese* v. *United States*, 352 U.S. 952; *Corrado* v. *United States*, 227 F. 2d 780, 782-784 (C.A. 6), certiorari denied, 351 U.S. 925; *United States* v. *Galato*, 171 F. Supp. 169, 173-174 (M.D. Pa.); *United States* v. *Profaci*, 168 F. Supp. 631, 636 (E.D. N.Y.), reversed on other grounds, 274 F. 2d 289 (C.A. 2); *United States* v. *Chandler*, 152 F. Supp. 169, 172-173, 177-178 (D. Md.); *United States* v. *Lumantes*, 139 F. Supp. 574, 575 (N.D. Cal.), affirmed, 232 F. 2d 216 (C.A. 9); *United States* v. *Genovese*, 133 F. Supp. 820, 827-829 (D.N.J.), affirmed *sub nom. United States* v. *Montalbano, supra*, 236 F. 2d 757; cf. *United States* v. *Accardo*, 113 F. Supp. 783, 785 (D.N.J.), affirmed, 208 F. 2d 632 (C.A. 3), certiorari denied, 347 U.S. 952.

In *United States* v. *Montalbano, supra*, 236 F. 2d 757, one of the appellants argued, in the same vein as petitioner, that his citizenship "cannot be revoked on account of fraud because, even had he revealed his crim-

inal record during [the] naturalization proceedings, that record was such that it would not have justified a refusal of citizenship" (at 759). "The theory seems to be," said the Third Circuit in rejecting this argument, "that one may deliberately engage in a falsehood concerning required facts during naturalization proceedings without fear of consequences so long as the truth, had it been revealed, would not have resulted in refusal of citizenship. The proposition has a built-in rebuttal. Mere recital of it bares its absurdity. If the government thinks it important enough to ask a question which it has authority to ask, the answer cannot be considered immaterial and meaningless. That the answer may not lead to a refusal of citizenship is not the only consideration. The government is entitled to know all the facts which it requires" (*ibid.*).

The same issue—whether the defendant's concealment of his arrest record could be the basis of a decree of denaturalization—was presented in *Corrado* v. *United States, supra,* 227 F. 2d 780, and the same result was reached. "Upon analysis," the Sixth Circuit said (at 784)—

> the issue is not whether naturalization would have been denied appellant had he revealed his numerous arrests, but whether, by his false answers, the Government was denied the opportunity of investigating the moral character of appellant and the facts relating to his eligibility for citizenship.

"How could any Government official or witness say whether or not citizenship would have been denied appellant from an investigation of the various causes of

his arrest," the court added, "when no opportunity for investigation was afforded? His false statement upon the material matter in actuality caused no investigation to be made" (*ibid.*). Pointing out that the award of citizenship "exacts the highest standard of rectitude," and that the government "should be afforded full opportunity for investigation of the moral character and fitness of an alien who seeks to be vested with [the privileges of citizenship]", the court concluded (*ibid.*):

> Where fraud has been practiced by the alien in procuring citizenship, it * * * will suffice to show that the applicant lied concerning a material fact which, if revealed, might have prevented his acquisition of citizenship.

In short, as observed in *United States* v. *Chandler*, *supra*, 152 F. Supp. at 177:

> * * * the test of materiality is not whether naturalization would have been refused if defendant had revealed the truth, but whether, by his false answers, the government was denied the opportunity of investigating the facts relating to his eligibility.[14]

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[14] Compare *United States* v. *Genovese*, *supra*, 133 F. Supp. at 828: "Although the arrests and convictions in themselves might not have provided sufficient basis for a denial of citizenship, certainly their disclosure would, or at least could, have motivated a more extensive investigation of defendant's past, especially within the five-year period prior to his petition, which investigation might have uncovered facts sufficient to require a refusal of naturalization. To that extent they were material and their nondisclosure under the circumstances attendant was fraudulent, and therefore constitutes a valid basis for revocation of citizenship."

2. The same standard has been applied in determining the materiality of false statements made in visa applications and other documents used by aliens to procure admission into the country, *viz.*, the tendency of the misrepresentation to forestall inquiry as to the applicant's eligibility to enter. *Duran-Garcia* v. *Neelly*, 246 F. 2d 287, 291 (C.A. 5); *Ablett* v. *Brownell*, 240 F. 2d 625, 630 (C.A. D.C.); *Landon* v. *Clarke*, 239 F. 2d 631, 634-636 (C.A. 1); *United States* v. *Flores-Rodriguez*, 237 F. 2d 405, 411-412 (C.A. 2); *United States ex rel. Volpe* v. *Smith*, 62 F. 2d 808, 812 (C.A. 7), affirmed on other grounds, 289 U.S. 422; *Ganduxe y Marino* v. *Murff*, 183 F. Supp. 565, 567 (S.D. N.Y.), affirmed *sub nom. Ganduxe y Marino* v. *Esperdy*, 278 F. 2d 330 (C.A. 2), pending on petition for certiorari, No. 224, this Term; cf. *Viruette Torres* v. *Hoy*, 269 F. 2d 289, 291 (C.A. 9); *United States ex rel. Jankowski* v. *Shaughnessy*, 186 F. 2d 580, 582 (C.A. 2). "The false statement of the name of appellant's mother", said the court in *Duran-Garcia* v. *Neelly, supra*, 246 F. 2d at 291, "was admittedly calculated to and could frustrate an inquiry into appellant's past * * *. Though perhaps a complete inquiry would have resulted in a discovery of no other material facts than the previous involuntary departure, it has been held that any concealment of information that tends to frustrate the proper official investigations is grounds for excludability under the statute, particularly if the deception is directed primarily against the United States." Similarly, in *United States* v. *Flores-Rodriguez, supra*, 237 F. 2d at 412, the court concluded that the defendant's false

denial in his visa application that he had ever been arrested for or convicted of any offense—

> * * * was material because it choked off a line of investigation which well might have resulted in his valid exclusion from the United States * * *.

A most persuasive reason for this rule was stated by District Judge Dimock in *Ganduxe y Marino* v. *Murff*, *supra*, 183 F. Supp. at 567 (affirmed by the Second Circuit "on the opinion of Judge Dimock" in *Ganduxe y Marino* v. *Esperdy*, *supra*, 278 F. 2d 330):

> A decision that an alien may make a false statement in his application for a visa in order to avoid the raising of a substantial question as to his eligibility and then, if he is caught in the false statement after having successfully choked off investigation, may try out his eligibility just as if nothing had happened would, it seems to me, be an invitation to false swearing.

Petitioner, having made a false statement in his application for naturalization in order to avoid the raising of a question as to his eligibility for citizenship, and having been caught in his falsehood after having successfully choked off investigation, contends in substance that in the proceedings to cancel the fraudulently procured decree he should be permitted to "try out his eligibility [for citizenship] just as if nothing had happened."

Another, and equally important, reason for the rule was pointed out in *Landon* v. *Clarke*, *supra*, 239 F. 2d 631. In that case the lower court had held that a mis-

representation in a visa application would be deemed material "only when inquiry resulting from the true facts would have been enough to justify the refusal of [the] visa" (239 F. 2d at 633).[15] The First Circuit, in reversing, stated (*id.* at 635-636):

> The district court's view, necessitating, as it does, proof of whether an alien would have been excludable if he had told the truth, or if the proper investigation had been held, in order to decide the

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[15] For other opinions dealing with visa applications which have stated, or tended to apply, this general test, see *Calvillo* v. *Robinson*, 271 F. 2d 249, 253 (C.A. 7); *United States ex rel. Fink* v. *Reimer*, 96 F. 2d 217, 218 (C.A. 2), certiorari denied, 305 U.S. 618; *United States ex rel. Leibowitz* v. *Schlotfeldt*, 94 F. 2d 263 (C.A. 7); *United States ex rel. Iorio* v. *Day*, 34 F. 2d 920, 921 (C.A. 2); *In re Field's Petition*, 159 F. Supp. 144 (S.D. N.Y.); *In re Iwanenko's Petition*, 145 F. Supp. 838, 842-843 (N.D. Ill.); *United States ex rel. Teper* v. *Miller*, 87 F. Supp. 285, 286 (S.D. N.Y.) We believe that the general approach enunciated in such opinions, for the reasons we discuss in the text, is misconceived, and that the opinions do not adequately analyze the issues involved. In some of the decisions, moreover, it appeared that the misrepresentations in question had not been made for the purpose of deceiving the immigration authorities, and the courts indicated, or at least implied, that, had that been its purpose, the opposite result might well have been reached. *United States ex rel. Leibowitz* v. *Schlotfeldt*, *supra* (applicant gave brother's name instead of his own, not out of any motive to deceive the immigration authorities, but because he had been living for years under his brother's name in his native country for reasons unrelated to his application to enter this country); *In re Iwanenko's Petition*, *supra* (applicant falsely gave place of birth as Poland, but solely to avoid being repatriated to the U.S.S.R., her true birthplace); and cf. the quotation, *supra*, p. 31, from *Duran-Garcia* v. *Neelly*, 246 F. 2d at 291. In the case at bar, petitioner's misrepresentation of his arrest record was manifestly for the purpose of deceiving the Immigration and Naturalization Service and the naturalization court. Furthermore, in certain of the decisions referred to in this footnote, *e.g.*, *Calvillo*, *Leibowitz*, it affirmatively appeared that an investigation would have revealed nothing derogatory and that the applicant would in the end have been granted the privilege he sought. That, of course, is not the situation here.

> materiality of a misrepresentation, would force the courts into the realm of conjecture and speculation, in trying to make a decision only the proper authorities could have capably made.

The rule for which petitioner argues would similarly require the court in which the denaturalization suit is brought to speculate. The court would have to attempt to decide whether the Immigration and Naturalization Service, on the basis of such facts as it might have discovered had it conducted the inquiry which it was prevented from conducting by the applicant's false statement, would have recommended to the naturalization court that it grant or deny the petition for citizenship, and what disposition of the petition the latter court would have made on the basis of the Service's recommendation. We submit that the proper interpretation of "material", as used in Section 340(a) of the Immigration and Nationality Act, ought not to require the court of denaturalization to enter into this "realm of conjecture and speculation."

3. Our view as to materiality under Section 340(a) is also supported by the test commonly applied in perjury cases. "The test of materiality of false testimony is whether the testimony has a natural effect or tendency to influence, impede or dissuade the investigating body from pursuing its investigation." *United States* v. *Moran*, 194 F. 2d 623, 626 (C.A. 2). See, also, *Woolley* v. *United States*, 97 F. 2d 258, 262 (C.A. 9), certiorari denied, 305 U.S. 614; *Carroll* v. *United States*, 16 F. 2d 951, 953 (C.A. 2), certiorari denied, 273 U.S. 763; *United States* v. *Parker*, 244 F. 2d 943, 950-951 (C.A. 7), certiorari denied, 355 U.S. 836; *United States* v.

Goldstein, 168 F. 2d 666, 671 (C.A. 2); *Blackmon* v. *United States*, 108 F. 2d 572, 573 (C.A. 5); *United States* v. *Henderson*, 185 F. 2d 189, 191 (C.A. 7). The same rule governs application of the false statements statute (18 U.S.C. 1001): "The test is whether the false statement has a natural tendency to influence, or was capable of influencing, the decision of the tribunal in making a determination required to be made." *Weinstock* v. *United States*, 231 F. 2d 699, 701-702 (C.A. D.C.); see, also, *Freidus* v. *United States*, 223 F. 2d 598, 601-602 (C.A. D.C.). Under this test, one who has given false testimony, or made a false statement, before a grand or petit jury, congressional committee, or administrative agency will not be heard to say that his testimony or statement was not material merely because the inquiring authority might have reached the same result had the truth been told. If the false statement has a "natural effect or tendency" to impede the investigating body in its search for the truth, it is material, albeit the court in which the perjury or false representation charge is tried might believe or conclude, on the basis of its reconstruction of events, that the jury, committee, or other inquiring body would probably have arrived at the same verdict or result even if the true facts had been disclosed. No different test of materiality should apply to a false statement made in a naturalization petition.

4. Petitioner, in order to be naturalized, was required to establish that he had behaved as a person of good moral character during the five years preceding his naturalization.[16] The question asked petitioner

[16] 8 U.S.C. (1934 ed.) 382; now 8 U.S.C. 1427(a).

concerning his prior arrests was obviously pertinent to the investigation of his moral character. The naturalization court was entitled to weigh all the evidence necessary to determine whether petitioner met the good-character requirement—including any evidence which might have been discovered if, as the district court found here (*supra*, pp. 15-16), the government had not been prevented from making an investigation based on the concealed facts. Thus, the courts have repeatedly held that false answers to questions concerning an alien's criminal record, by shutting off further inquiry into the alien's moral character, constitute a fraud upon the naturalization court. *Stacher* v. *United States*, 258 F. 2d 112, 123 (C.A. 9), certiorari denied, 358 U.S. 907; *United States* v. *De Lucia*, 256 F. 2d 487, 490 (C.A. 7), certiorari denied, 358 U.S. 836; *United States* v. *Montalbano*, *supra*, 236 F. 2d at 759-760; *Corrado* v. *United States*, *supra*, 227 F. 2d at 782-784; *United States* v. *Galato*, *supra*, 171 F. Supp. at 173-174; *United States* v. *Profaci*, *supra*, 168 F. Supp. at 636; *United States* v. *Chandler*, *supra*, 152 F. Supp. at 172-173, 177-178; *United States* v. *Accardo*, *supra*, 113 F. Supp. at 785; cf. *Del Guercio* v. *Pupko*, 160 F. 2d 799, 800 (C.A. 9). Even though (as here) the misrepresentation concerns arrests occurring before the statutory period, their concealment is none the less material since they relate to the person's moral character in general and their concealment prevents inquiry directed specifically to his moral character during the statutory period. Cf. *Stevens* v. *United States*, 190 F. 2d 880, 881 (C.A. 7); *Corrado* v. *United States*, *supra*, 227 F. 2d at 781, 784; *United States* v. *De Lucia*,

supra, 256 F. 2d at 490; *United States* v. *Profaci*, *supra*, 168 F. Supp. at 636; *United States* v. *Chandler*, *supra*, 152 F. Supp. at 174, 178. In other words, it is not for the alien to decide, in answering clear and explicit questions asking for particular information, which facts concerning his moral character need not be disclosed (and can without fear of penalty be falsely denied) because he believes that they are not important enough for the government to investigate.

5. Petitioner argues, however, that his concealment of two of his arrests was immaterial because they were "for violations of city ordinances or regulations which clearly were unconstitutional on their face" (for which proposition he cites subsequent decisions of this Court) and that the concealment of his third arrest (for "general breach of peace") was likewise unimportant because it resulted in only a $25 fine, which "was nullified when the case was 'nolled' on appeal" (Br. 16-17). We submit that a naturalization applicant who is asked if he has ever been arrested is required to disclose *all* of his arrests, irrespective of the validity of the statutes or ordinances under which he was arrested. Even if the ordinance was unconstitutional, it does not necessarily follow that the arrest has no relevance to the question of his moral character. If the naturalization court wrongly denies him naturalization on the basis of such an arrest, or inferences as to his moral character erroneously based thereon, a ready remedy—an appeal to the higher courts—is available to him. Moreover, the argument based on the alleged unconstitutionality of two of the ordinances in question does not, as petitioner recognizes, reach the third arrest, for

"general breach of peace".[17] As the court of appeals stated (R. 97), "[t]he failure to disclose it [the latter arrest] alone would be sufficient to sustain the judgment of the district court. For it is not the number of arrests, nor the character of the offenses, which is the important factor. It is the concealment of any material fact sought to be inquired into, including any arrest, which is the fraudulent act and which justifies * * * the finding of fraud * * *".

Petitioner relies (Pet. 9, 10, 11; Br. 12) on *United States* v. *Anastasio*, 226 F. 2d 912 (C.A. 3), certiorari denied, 351 U.S. 931, and *United States* v. *Kessler*, 213 F. 2d 53 (C.A. 3), to support his contention that "denaturalization may not be based on misrepresentations of arrests the disclosure of which would not have warranted denial of naturalization" (Pet. 11). But in *Anastasio*, unlike the instant case, the government knew of the defendant's arrest record prior to naturalization, and therefore was not deceived; there was, in short, no question in that case of the government's being prevented by the applicant's misrepresentation from conducting an inquiry into the pertinent facts. 226 F. 2d at 917-918. In *Kessler*, the "arrests" involved were in fact "false arrests," for a crime ("Obstructing highway") "unknown to the law of Pennsylvania" (213 F. 2d at 56). The defendant in that case testified at her denaturalization trial that she gave a negative answer to the question about arrests in the naturalization proceedings because it was her understanding at the time of the "arrests" and her discharge from

[17] Of course, the fact that his prosecution on this charge was "nolled" on appeal does not establish that the *arrest* was illegal.

custody that she "didn't commit any crime or * * * do anything wrong", and she "didn't mean to lie" (213 F. 2d at 55). For these reasons, the court held that the defendant's answers not only were not willful misstatements but that they were not misstatements at all, since the question asked did not cover false arrests. The instant case is thus unlike *Kessler* in two vital respects. First, petitioner did not take the stand to testify why he did not disclose his arrests, nor is there anything in the record on which to challenge the findings below that the misrepresentation was knowing and willful. Second, there is no suggestion here that any of petitioner's arrests were "false arrests" in the sense of *Kessler* (*i.e.*, arrests for a crime totally unknown to the law), and petitioner does not suggest any illegality, even now, as to one of his three arrests.[18]

6. Finally, it does not follow that, if nothing adversely reflecting on petitioner's private moral character had been discovered as a result of the investigation which would have been made had he not concealed his arrest record, his petition for naturalization would necessarily have been granted. On the contrary, it would appear likely that, had such an investigation

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[18] See also *United States* v. *Montalbano*, *supra*, 236 F. 2d at 760 (including footnote 3), a later case also decided by the Third Circuit, which specifically considered the very portion of *Kessler* quoted by petitioner (Br. 12). The court in *Montalbano* said that the decision in *Kessler* was based on the fact that the defendant had not made an untruthful answer to the question inquiring about arrests (petitioner's answer was undisputedly untruthful), and held that the concealment of legal arrests constitutes a material misrepresentation since it prevents the government from making further inquiry. Since at least one of the arrests here was undisputedly legal, the decision of the court below is completely consistent with the position of the Third Circuit.

been made, petitioner would have failed to obtain naturalization for reasons apart from private moral character, *viz.*, lack of attachment to the principles of the Constitution. Petitioner, at the time of his arrests (in the years 1929 and 1930), was the district organizer of the Communist Party for the Connecticut district (*supra*, pp. 12, 14). As such, he held the topmost position in the Party hierarchy for that area—a position which required that he have "a thorough understanding and knowledge" of the ideology of Communism and how to apply it in the "day-to-day activities of the" Party (*supra*, p. 12). Although the record sheds no clear light on the matter, it seems not unlikely that the activities for which he was arrested—distributing handbills, making a harangue in an unauthorized place and disturbing the peace (see *supra*, pp. 9-10)—were related to his role as a Party leader and organizer. At the least it was possible, if not indeed highly probable, that, had the naturalization authorities made an investigation into the circumstances of petitioner's arrests, they would have discovered the fact of his position of leadership in the hierarchy of the Communist Party. And it is clear from naturalization examiner Derrenger's testimony that, had the authorities learned of that fact, they would have recommended against the granting of his petition for naturalization (*supra*, pp. 7-9). See, also, *infra*, pp. 45-47. Thus, wholly apart from private moral character considerations, it can be seen that there was a direct causal relationship between petitioner's concealment of his arrest record and his successful application for citizenship. Cf. *United States* v. *Chandler*, *supra*, 152 F. Supp. at 178:

Although defendant's arrests in 1930-1932 were not of themselves sufficient to show bad moral character in 1943 [citing *Schware* v. *Board of Bar Examiners,* 353 U.S. 232]; and the single conviction might not of itself have resulted in a recommendation against naturalization, nevertheless, when taken together, they *probably would have led to further investigation and discovery of defendant's Communist Party membership and activities.* When considered in that light, the materiality of the question on the issue of good moral character increases. [Emphasis added.]

II

The Judgment of Denaturalization Is Independently Sustained By Petitioner's Fraudulent Concealment of His Communist Party Membership

The district court's judgment of denaturalization had two bases—concealment and misrepresentation in relation to petitioner's record of arrests; concealment and misrepresentation in relation to petitioner's Communist Party membership. The second ground, we submit, provides a sound and independent basis for sustaining the judgment below, irrespective of this Court's disposition of Point I, *supra.* Resolution of the issue discussed under Point II, we emphasize, does not depend in any way on the question whether a denaturalization complaint may embrace matters not covered by the affidavit of good cause.

Petitioner suggests (Brief, p. 5, n. 2) that, if this Court disagrees with the government on Point I, it remand the case to the court of appeals, which found it unnecessary to consider the legal effect of the second

category of concealment and misrepresentation. To be sure, this Court commonly remands to the court of appeals for consideration of issues not considered by that court. This practice, however, is far from an unvarying one (see, *e.g.*, *O'Leary* v. *Brown-Pacific-Maxon*, 340 U.S. 504, 508, and *United Gas Co.* v. *Memphis Gas Div.*, 358 U.S. 103, 114); and there are persuasive reasons for believing that this "litigation had better terminate now", *O'Leary* case, *supra*, at 508.

These reasons are as follows. The evidence that petitioner was a member of the Communist Party and an active and vigorous exponent of Communism is overwhelming and uncontradicted (see the Statement, *supra*, pp. 10-14), and is reflected in explicit findings of the district court (R. 81, 84-85). Petitioner's argument to the court of appeals on this phase of the case was strictly a legal one, *i.e.*, that this issue is controlled by this Court's decisions in *Nowak* v. *United States*, 356 U.S. 660, and *Maisenberg* v. *United States*, 356 U.S. 670. Petitioner has made no effort to challenge the evidentiary basis of the district court's findings as distinguished from their legal significance or effect. The court of appeals stated in its opinion (R. 97):

> * * * it is unnecessary for us to consider whether, as the defendant urges, the findings of the district court as to his concealment of his membership in the Communist Party and as to his lack of attachment to the principles of the Constitution and his disposition toward the good order of the United States can stand in the light of the decisions of the Supreme Court in Nowak v. United States,

1958, 356 U.S. 660, and Maisenberg v. United States, 1958, 356 U.S. 670, which were handed down after the district court entered its judgment in this case.

We believe, in short, that there can be no dispute as to the underlying facts and that the question narrows to the legal issue whether this case is controlled by *Nowak* and *Maisenberg*, as petitioner argued below, or whether it is significantly different from those cases.[19] Certainly, a determination as to the reach and applicability of this Court's prior decisions is one which may appropriately be made by this Court, at least where, as here, the determination does not involve the burdens of canvassing and assessing a voluminous record. This case, we believe, is one in which a remand "would be both unnecessary and dilatory" and in which the Court "could hardly be aided by a further examination of the record by the Court of Appeals," *United Gas Co.* v. *Memphis Gas Div., supra*, 358 U.S. at 114.

On the merits this case, in our view, cannot be deemed to fall within *Nowak* or *Maisenberg*. In each of those cases, the charge of fraud stemmed from the defendant's allegedly false answer to the second part of question 28 on the preliminary naturalization form:

> 28. Are you a believer in anarchy? . . . Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? . . .

[19] Although petitioner's opening brief in this Court is not addressed to this issue, counsel may, of course, deal with the matter in a reply brief.

Nowak, 356 U.S. at 663-665; *Maisenberg*, 356 U.S. at 672.[20] The defendant in each case answered "No" to each part. The government contended, and the lower courts in each case had held, that the defendant should have answered "Yes" to the second part of the question because, at the time of his naturalization, (1) the defendant was a member of the Communist Party, (2) the Party taught "the overthrow of existing government," and (3) the defendant was aware of this Party teaching. This Court held, however, that the second part of the question, in its context and in the context of the times in which it was answered, could well be interpreted as requiring disclosure only of membership in anarchistic organizations; it accordingly concluded that the second part of the question was "too ambiguous" to sustain the fraudulent procurement charge based on the defendant's membership in the Communist Party. *Nowak*, 356 U.S. at 664-665; *Maisenberg*, 356 U.S. at 672.

The instant case does not turn on the clarity of question 28, for petitioner was also asked, in his naturalization proceedings, to name all of the organizations to which he belonged and to state whether he believed in Communism (*supra*, pp. 7-8). The inescapable import of his responses, stating that the only organization to which he belonged was a fraternal benefit society

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[20] In *Maisenberg*, an alternative basis of the judgment of denaturalization was that the defendant had falsely stated at the time of her naturalization that she was attached to the principles of the Constitution (356 U.S. at 671-672). This Court found it unnecessary to reach this aspect of the judgment because of its determination that the defendant had not been shown to be lacking in such attachment "as an objective matter" (356 U.S. at 672, n. 3).

which he named and that he did not believe in Communism (*supra*, pp. 7-8), was that he was not a Communist or a Communist Party member. The responses were unmistakably false; the uncontradicted evidence is that for years prior to and subsequent to his naturalization he was an active and ardent Party member, officer, and leader, holding numerous highly responsible posts in the Party hierarchy (*supra*, pp. 10-14). The district court specifically found, "beyond all reasonable doubt," that petitioner deliberately and willfully concealed that at the time of his naturalization he was "an active member, officer and full-time paid functionary of the Communist Party of the United States" (R. 81).

That the concealment of his membership in the Party and adherence to its tenets was material is plain under the test of materiality previously discussed (*supra*, pp. 27-35). Had petitioner revealed his membership in the Party, it is evident that a path of significant further inquiry would have been opened to the Immigration and Naturalization Service and the naturalization court. For example, it would have been open to them to inquire into how "meaningful" his membership was. Cf. *Rowoldt* v. *Perfetto*, 355 U.S. 115, 120. If it appeared, for example, from their investigation that his membership was substantially lacking in any "'political' implications" (*Rowoldt, supra*, at 120), or that his joining was merely the result of economic desperation (*id.* at 117-118), it might very well be that his petition for naturalization would have been granted notwithstanding his Party membership. On the other hand, if further inquiry had uncovered (as

it doubtless would have), the fact that petitioner was, and had been for years, an active and zealous member, officer, and full-time Party functionary, indeed one of the leaders in the Party hierarchy, the result obviously might well have been otherwise.

Petitioner, as an applicant for the "high privilege" of citizenship, of course bore the burden of proving his eligibility. *United States* v. *Schwimmer*, 279 U.S. 644, 649-650; *United States* v. *Manzi*, 276 U.S. 463, 467; *United States* v. *Macintosh*, 283 U.S. 605, 615-616. That burden would have been a severe one once the character of his membership in the Party and the extent of his commitment to its tenets and ideology were discovered. Whether the Communist Party in 1940, when petitioner was naturalized, urged and advocated the violent overthrow of this government, and petitioner, as a knowledgeable member of the Party, knew of and endorsed such advocacy, would not have been the sole, or indeed the most important, question which the naturalization court would have been required to decide in determining whether petitioner had proved himself eligible—though it would certainly have been a legitimate question, and one which the court might well have resolved against him. Cf. *Schneiderman* v. *United States*, 320 U.S. 118, 153. A court of naturalization might legitimately conclude that an applicant for citizenship was lacking in attachment to the principles of the Constitution without finding that he actively urged their forcible destruction.

We are not arguing that if petitioner had disclosed his Party membership his application for citizenship

would *necessarily* have been denied. What we do say is that his membership, particularly because of the clear relevance of the facts which would have been discovered as a result of the inquiry which would have ensued had he not concealed it, was in itself a highly material fact. The proof that he concealed it was, as we have said, overwhelming and undisputed. On this ground alone, therefore, the judgment of denaturalization was both warranted and required. Cf. *Sweet* v. *United States*, 211 F. 2d 118, 120 (C.A. 6), certiorari denied, 348 U.S. 817.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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SEPTEMBER 1960.

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JAMES P. BRENNAN

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 39

[redacted]

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

[redacted]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 22

PETER CHAUNT, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REPLY BRIEF FOR PETITIONER

We see no need, in the light of the government's brief, to add to our discussion of the two questions presented by petitioner. This reply will be addressed to the government's Point II, that "The Judgment of Denaturalization Is Independently Sustained By Petitioner's Fraudulent Concealment of His Communist Party Membership" (Br. 41).

This point was not reached by the Court of Appeals, and was therefore not argued in our principal brief.

The government submits (Br. 41-43) that the point involves no problems of fact and should be decided by this Court if either of the points raised by petitioner is determined in his favor. In our view, the government's point presents serious factual questions, and its resolution will involve the "burdens of canvassing and assessing'" (Govt. Br. 43) the trial record. Since the issue has been raised, however, we will undertake such a "canvassing and assessing." On the merits the issue should be decided in favor of petitioner, whether the decision is made by this Court or is left to the Court of Appeals in the normal fashion.[1]

I. The Evidence Fails to Establish That Petitioner Misrepresented Communist Belief and Membership.

It is essential to the government's contention that the evidence, when tested by the stringent denaturalization standard, demonstrate that petitioner untruthfully answered two questions asked of him by naturalization examiner Derrenger. Derrenger had no independent recollection of his interview of petitioner, but testified concerning his practice in pre-naturalization interviews.[2] Derrenger testified that "I would ask the petitioner [for naturalization] whether he believed in Nazism, Communism or Fascism." If the applicant

[1] The two cases cited by the government as exceptions to the normal remand practice (Br. 42) do not seem relevant. In both, the Court emphasized that the limited scope of judicial review of the factual findings, there made by administrative agencies, made it pointless to remand on the particular records. *O'Leary* v. *Brown-Pacific-Maxon*, 340 U.S. 504, 508; *United Gas Co.* v. *Memphis Gas Div.*, 358 U. S. 103, 114. In a denaturalization case, in contrast, appellate review of the facts is required to be comprehensive. *Knauer* v. *United States*, 328 U. S. 654, 657; *Stacher* v. *United States*, 258 F. 2d 112, 120 (9th Cir. 1958).

[2] See Govt. Br. 6, ftn. 6.

answered in the affirmative, Derrenger would note "NAC" on the application, meaning "not attached to the Constitution." (R. 28.) In fact, Derrenger noted on petitioner's application "AC" (R. 73; 5 Tr. 14).

Derrenger also testified that it was his practice to ask an applicant "what organizations he belonged to," to note the applicant's answer on the form, and to make sure that the applicant had answered the question fully (R. 30). He noted on petitioner's application: "Organization—Fraternal Benefit Society of Internation [sic] Workers Order, where applicant is employed—no others" (R. 73). This meant, he testified, that the present petitioner told him he belonged to the International Workers Order where he was employed, and to no other organizations (R. 30).

The circumstances that Derrenger testified as to his practice and not as to the particular interview, and that the questions were not required by statute or regulation, raise a serious question whether his testimony established by the requisite degree of proof the essential facts of what petitioner was asked and what he answered. *Cufari* v. *United States*, 217 F. 2d 404 (1st Cir. 1954). But assuming that the questions and answers were those indicated by Derrenger's testimony nevertheless the evidence fails to establish that the answers were false.

The questions, being couched in the present tense, related to petitioner's belief in Communism and organizational membership on the date of the interview, June 27, 1940 (R. 73; Govt. Br. 5). The evidence fails to establish that on or near that date petitioner believed in Communism or belonged to the Communist Party (or to any organizations other than the IWO).

Hence the evidence does not unequivocally establish that the answers were false, and the foundation of the government's contention disappears.

The government's evidence showed that in the early 1930's, petitioner was an open, publicly-avowed district organizer of the Communist Party. But this evidence goes no further than 1936, being carried so far by testimony of Lautner that in 1936 or 1938 petitioner attended a national convention of the Party as the head of a Missouri delegation.[3] The only evidence indicating that petitioner belonged to the Communist Party at a subsequent date was Lautner's testimony that in the winter of 1945-46, petitioner attended a Party meeting as district representative of the Party's Ohio District.[4]

Furthermore, Lautner testified that from 1939 to 1942 petitioner was a full-time employee of the IWO

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[3] Lautner originally testified that the convention was held in 1938 (R. 44-45). He later testified that it was held in 1936 or 1938, he did not recall which (7 Tr. 383, 455). In view of the heavy burden of proof on the government, we believe we are entitled to assume the alternative more favorable to the petitioner, namely, 1936.

[4] These facts appear from the government's own summary of the evidence (Br. 10-14) subject to the correction of one inaccuracy. The government's brief (p. 13) states that after the convention of 1936 or 1938 "Lautner continued thereafter to meet petitioner from time to time at Party National Conventions and National Committee meetings (R. 44)." Examination of the record at the cited page will show that Lautner was testifying not about Party meetings after the 1936 or 1938 convention, but about meetings after the conclusion of a school which had been held in 1931 (R. 40-41). Furthermore, Lautner himself subsequently testified that he was not sure that he had met petitioner at any Party conventions other than that held in 1936 or 1938 (7 Tr. 447), and it also became apparent that he had been merely assuming, not recalling, that he had seen petitioner at national committee meetings (7 Tr. 443-45).

(R. 50-51), and as we have already seen, petitioner told Derrenger that he was so employed on June 27, 1940 (R. 73). This employment is clearly inconsistent with petitioner's having been a district organizer for the Party during its tenure (see 7 Tr. 390).

The evidence therefore shows petitioner's Party officership preceding the critical date by four years and Party leadership following the critical date by five and a half years. There is no evidence of Party membership or leadership between the two extremes. This fact in itself prevents a finding of Communist Party membership or Communist belief at a date about in the middle of the period, particularly one which must be supported "by clear, unequivocal and convincing evidence which does not leave the issue in doubt" (Pet. Br. 11). Furthermore, as we have seen, it is clear that petitioner's Party status did change at some time after the 1936 convention since he could not have been a Party district organizer after he went to work for the IWO in 1939. Finally, in view of the government's close surveillance of the Communist Party and the extent of the dossier it compiled on petitioner, the absence of evidence for a period of more than nine years makes it more reasonable to surmise that petitioner was not a Party member in June 1940, than to speculate the contrary.

In an effort to plug the gap in the evidence, the government emphasizes (Br. 13) that the IWO, which employed petitioner from 1939 to 1942, was controlled by the Communist Party, according to the testimony of Lautner, a professional anti-Communist witness and "consultant" (7 Tr. 463-69). But petitioner did not conceal from the naturalization examiner his connection with the IWO; on the contrary, Derrenger

noted on petitioner's application that petitioner belonged to and worked for the IWO. There is, therefore, no basis for the government's insinuation that petitioner's disclosed connection with the IWO is evidence that petitioner suppressed membership in the Communist Party during the same period.

II. The Evidence Does Not Support the Finding of Misrepresentation of Attachment and Allegiance.

The district court found (R. 85) that in the naturalization proceeding the petitioner falsely represented attachment to the principles of the Constitution and allegiance to the United States. So far as we can perceive the government makes no attempt to justify this finding and suggests no evidentiary basis for it. Instead, it ignores the finding altogether.[5] The fact is that there is nothing in the record to support the finding. The district court made the finding solely on the basis of its supposition, itself unsupported, that petitioner was at the time of naturalization a member of the Party. Even if the supposition had been warranted, it did not furnish an adequate basis for the finding of nonattachment and lack of allegiance. *Schneiderman* v. *United States*, 320 U. S. 118; *Nowak* v. *United States*, 356 U. S. 660; *Maisenberg* v. *United States*, 356 U. S. 670.

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[5] Thus the government recognizes (Br. 41) only "two bases" for the denaturalization judgment, "concealment and misrepresentation in relation to petitioner's record of arrests; concealment and misrepresentation in relation to petitioner's Communist Party membership."

III. Even if Misrepresentation of Communist Party Membership Had Been Proved, the Misrepresentation Was Immaterial and Hence Not a Cause for Denaturalization.

Petitioner was naturalized under the 1906 Act (Pet. Br. 16, ftn. 5). That Act did not forbid the naturalization of members of the Communist Party (cf. *Schneiderman* v. *United States, supra*), or, for that matter, of members of organizations advocating violent overthrow of the government.[6]

Thus a misrepresentation of Communist Party membership did not satisfy the first test of materiality for denaturalization purposes, since it did not suppress a fact which in itself would have rendered an applicant ineligible for citizenship. (See Pet. Br. 11-15.) The government does not claim the contrary, but bases its claim of materiality on the proposition that disclosed Party membership "might" have led the naturalization court to "conclude that an applicant for citizenship was lacking in attachment to the principles of the Constitution" (Br. 46).

Such attachment was, of course, a requisite under the 1906 Act. And, in accordance with our second test of materiality (Pet. Br. 11), denaturalization would be justifiable for misrepresentation of a fact which, though not itself disqualifying, would have led to the discovery of other facts which were disqualifying. But it is clear that this is not the situation here. The government's complaint in the denaturalization proceeding alleged that petitioner had misrepresented attachment

[6] The government's brief in No. 25 of this term, *Polites* v. *United States*, at pp. 38-42, examining the legislative history of the Nationality Act of 1940, shows that the Act was intended to *change* the 1906 Act so as for the first time to withhold naturalization from members of organizations advocating violent overthrow, including, by Congressional assumption, members of the Communist Party.

and allegiance (R. 19). Yet, as we have seen, it utterly failed to prove non-attachment or lack of allegiance. Hence it failed to carry its burden of proving that the alleged misrepresentation foreclosed discovery of either of these disqualifying factors.[7]

Respectfully submitted,

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[7] The government also suggests (Br. 39-40) that if petitioner had disclosed his arrest record, "it would appear likely" that an ensuing investigation would have discovered his Communist Party connection and might thus have caused denial of naturalization for lack of attachment. The speculation as to what an investigation might have disclosed is contrary to the government's own testimony (Pet. Br. 17-18), and in any event does not satisfy the evidentiary burden in denaturalization cases. But even if there were evidentiary basis for the surmise, nevertheless, for the reasons explained in the text, the Communist Party connection was not shown to be grounds for a finding of non-attachment.

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No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1960

PETER CHAUNT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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Solicitor General,
Department of Justice, Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 22

PETER CHAUNT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

At page 40 of our main brief, in connection with our argument that, if the naturalization authorities had investigated the circumstances of petitioner's arrests, they might well have discovered the fact of his position of leadership in the Communist Party, we stated:

> Petitioner, at the time of his arrests (in the years 1929 and 1930), was the district organizer of the Communist Party for the Connecticut district (*supra*, pp. 12, 14).

The reference to page 14 was to the following paragraph of the Statement:

In addition to the foregoing testimony, numerous documents were introduced at the trial to establish petitioner's activity and official status in the Communist Party. These included Party membership books for 1928 (G. Ex. 4, 6 Tr. 193–194, 197, 327), 1930 (G. Ex. 5, 6 Tr. 194, 197, 326–327) and 1931 (G. Exs. 6 and 7, 6 Tr. 194–195, 197, 326–327) signed by petitioner as district organizer (6 Tr. 192-196), and articles from the Party organ, the *Daily Worker,* describing petitioner's Party activities and status (G. Exs. 8–13, 7 Tr. 406-416).

Our reference to government exhibits 4 and 5 as Party membership books for 1928 and 1930, respectively, was an inadvertence. Both were issued in 1931. The year 1928 appeared on government exhibit 4 as the year in which the Party member to whom that book was issued was admitted to the Communist Party, and the year 1930 appeared on government exhibit 5 as the year in which the member to whom that book was issued "entered [the] revolutionary movement." The issuance dates of the books were April 13, 1931, and February 17, 1931, respectively.

The essential point of our argument, however, remains valid. The record shows that petitioner was the Party's district organizer for the Connecticut district during at least a major part of the period in which his arrests occurred, including the dates of his second and third arrests. His arrests occurred on July 30, 1929, December 21, 1929, and March 11, 1930 (see our main brief at pp. 9–10). The government's witness Lautner, who joined the Communist

Party "in the late fall of 1929" (6 Tr. 287), testified that he knew petitioner to be "a district organizer in Connecticut" at that time (R. 44–45). Government exhibit 13 (7 Tr. 413–414)—the *Daily Worker* for February 10, 1930—identified petitioner in a news story under a Waterbury, Connecticut, dateline as "Communist Party organizer," and Lautner testified that petitioner was "the Communist Party organizer in Connecticut" at that time (7 Tr. 413). And government exhibit 12 (7 Tr. 409–410)—the *Daily Worker* for June 21, 1930—contained an article by petitioner, the by-line of which identified him as "District Organizer, District 15." District 15 was the Party's Connecticut district (7 Tr. 409).

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

OCTOBER 1960.

U.S. GOVERNMENT PRINTING OFFICE: 1960

SUPREME COURT OF THE UNITED STATES

No. 22.—October Term, 1960.

Peter Chaunt, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November 14, 1960.]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioner, a native of Hungary, was admitted to citizenship by a decree of the District Court in 1940. Respondent filed a complaint to revoke and set aside that order as authorized by § 304 (a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, as amended, 68 Stat. 1232, 8 U. S. C. § 1451 (a), on the ground that it had been procured "by concealment of a material fact or by wilful misrepresentation."[1] The complaint stated that petitioner had falsely denied membership in the Communist Party and that by virtue of that membership

[1] The section provides in relevant part:

"It shall be the duty of the United States Attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title [§ 1421 of 8 U. S. C.] in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by wilful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively . . ."

he lacked the requisite attachment to the Constitution, etc., and the intent to renounce foreign allegiance. It also alleged that petitioner had procured his naturalization by concealing and misrepresenting a record of arrests. The District Court cancelled petitioner's naturalization, finding that he had concealed and misrepresented three matters—his arrests, his membership in the Communist Party, and his allegiance. The Court of Appeals affirmed, reaching only the question of the concealment of the arrests. 270 F. 2d 179. The case is here on a writ of certiorari.

One question, on a form petitioner filled out in connection with his petition for naturalization, asked if he had ever been "arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation" and if so to give full particulars. To this question petitioner answered "no." There was evidence that when he was questioned under oath by an examiner he gave the same answer. There was also evidence that if his answer had been "yes," the investigative unit of the Immigration Service would check with the authorities at the places where the arrests occurred "to ascertain . . . whether the full facts were stated."

The District Court found that from 10 to 11 years before petitioner was naturalized he had been arrested three times as follows:

(1) On July 30, 1929, he was arrested for distributing handbills in New Haven, Connecticut, in violation of an ordinance. He pleaded not guilty and was discharged.

(2) On December 21, 1929, he was arrested for violating the park regulations in New Haven, Connecticut, by making "an oration, harangue, or other public demonstration in New Haven Green outside the churches." Petitioner pleaded not guilty. Disposition of the charge is not clear, the notation on the court record reading "Found

J. S." which respondent suggests may mean "Judgment Suspended" after a finding of guilt.

(3) On March 11, 1930, he was again arrested in New Haven and this time charged with "General Breach of the Peace." He was found guilty by the City Court and fined $25. He took an appeal and the records show "nolled April 7, 1930."

Acquisition of American citizenship is a solemn affair. Full and truthful response to all relevant questions required by the naturalization procedure is, of course, to be exacted, and temporizing with the truth must be vigorously discouraged. Failure to give frank, honest, and unequivocal answers to the court when one seeks naturalization is a serious matter. Complete replies are essential so that the qualifications of the applicant or his lack of them may be ascertained. Suppressed or concealed facts, if known, might in and of themselves justify denial of citizenship. Or disclosure of the true facts might have led to the discovery of other facts which would justify denial of citizenship.

On the other hand, in view of the grave consequences to the citizen, naturalization decrees are not lightly to be set aside—the evidence must, indeed be "clear, unequivocal, and convincing" and not leave "the issue . . . in doubt." *Schneiderman* v. *United States*, 320 U. S. 118, 125, 158; *Baumgartner* v. *United States*, 322 U. S. 665, 670. The issue in these cases is so important to the liberty of the citizen that the weight normally given concurrent findings of two lower courts does not preclude reconsideration here, for we deal with "judgments lying close to opinion regarding the whole nature of our Government and the duties and immunities of citizenship." *Baumgartner* v. *United States*, *supra*, 671. And see *Klapprott* v. *United States*, 335 U. S. 601, 612, 617.

While disclosure of them was properly exacted, the arrests in these cases were not reflections on the character

of the man seeking citizenship. The statute in force at the time of his naturalization required that "he has behaved as a person of good moral character, attached to principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States" during the previous five years.[2] These arrests were made some years prior to the critical five-year period. They did not, moreover, involve moral turpitude within the meaning of the law. Cf. *Jordan* v. *De George*, 341 U. S. 223. No fraudulent conduct was charged. They involved distributing handbills, making a speech, and a breach of the peace. In one instance he was discharged, in one instance the prosecution was "nolled," and in the other (for making a speech in a park in violation of city regulations) he apparently received a suspended sentence. The totality of the circumstances surrounding the offenses charged make them of extremely slight consequence. Had they involved moral turpitude or acts directed at the Government, had they involved conduct which even peripherally touched types of activity which might disqualify one from citizenship, a different case would be presented. On this record the nature of these arrests, the crimes charged, and the disposition of the cases do not bring them, inherently, even close to the requirement of "clear, unequivocal, and convincing" evidence that naturalization was illegally procured within the meaning of § 304 (a) of the Immigration and Nationality Act.

It is argued, however, that disclosure of the arrests made in New Haven, Connecticut, in the years 1929 and 1930 would have led to a New Haven investigation at which leads to other evidence—more relevant and material than the arrests—might have been obtained. His

[2] Section 4 of the Naturalization Act of June 29, 1906, 34 Stat. 598, as amended, 45 Stat. 1513-1514.

residence in New Haven was from February 1929 to November 1930. Since that period was more than five years before his petition for naturalization, the name of his employer at that time was not required by the form prepared by the Service. It is now said, however, that if the arrests had been disclosed and investigated, the Service might well have discovered that petitioner in 1929 was "a district organizer" of the Communist Party in Connecticut. One witness in this denaturalization proceeding testified that such was the fact. An arrest, though by no means probative of any guilt or wrongdoing, is sufficiently significant as an episode in a man's life that it may often be material at least to further enquiry. We do not minimize the importance of that disclosure, in this case, however, we are asked to base materiality on the tenuous line of investigation that might have led from the arrests to the alleged communistic affiliations, when as a matter of fact petitioner in this same application disclosed that he was an employee and member of the International Workers' Order, which is said to be controlled by the Communist Party. In connection with petitioner's denial of such affiliations, respondent argues that since it was testified that the IWO was an organization controlled and dominated by the Communist Party, it is reasonable to infer that petitioner had those affiliations at the time of the application. But by the same token it would seem that a much less tenuous and speculative nexus with the Communist Party, if it be such, was thereby disclosed and was available for further investigation if it had been deemed appropriate at the time. Cf. *United States* v. *Anastasio*, 226 F. 2d 912. It is said that IWO did not become tainted with Communist control until 1941. We read the record differently. If the Government's case is made out, that taint extended back at least as far as 1939. Had that disclosure not been made in the application, failure to report the arrests would

have had greater significance. It could then be forcefully argued that failure to disclose the arrests was part and parcel of a project to conceal a Communist Party affiliation. But on this record, the failure to report the three arrests occurring from 10 to 11 years previously are neutral. We do not speculate as to why they were not disclosed. We only conclude that, in the circumstances of this case, the Government has failed to show by "clear, unequivocal, and convincing evidence" either (1) that facts were suppressed which, if known, would have warranted denial of citizenship or (2) that their disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship.

There are issues in the case which we do not reach and which were not passed upon by the Court of Appeals. Accordingly the judgment will be reversed and the cause remanded to it so that the other questions raised in the appeal may be considered.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 22.—October Term, 1960.

Peter Chaunt, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November 14, 1960.]

Mr. Justice Clark, with whom Mr. Justice Whittaker and Mr. Justice Stewart join, dissenting.

Petitioner swore in his application for naturalization that he had never been under arrest when in fact he had been arrested in New Haven, Connecticut, on three separate occasions within an eight-month period. The arrests were for distributing handbills in a public street, "making an oration, harangue or other public demonstration" in a public park and a "general breach of the peace." Both the District Court and the Court of Appeals have found that petitioner's falsification "was an intentional concealment of a material fact and a willful misrepresentation which foreclosed the Immigration and Naturalization Service and the District Court from making a further investigation as to whether he had all the qualifications for citizenship . . . ." These findings, as such, are not disputed. It is nowhere suggested, for example, that the petitioner's falsehoods were the result of inadvertence or forgetfulness—that they were anything but deliberate lies. This Court, however, brushes these findings aside on the ground [1] that the arrests "were not reflections on the char-

[1] The Court says that "the totality of the circumstances surrounding the offenses charged makes them of extremely slight consequence." However, it overlooks the fact that neither the content of the handbills, or of the harangue in the park nor the nature of the conduct leading to the conviction in the city court for a general

acter of the man seeking citizenship." The Swiss philosopher Amiel tells us that "character is an historical fruit and is the result of a man's biography." Petitioner's past, if truthfully told in his application, would have been an odorous one. So bad that he dared not reveal it. For the Court to reward his dishonesty is nothing short of an open invitation to false swearing to all who seek the high privilege of American citizenship.

The Court first says that arrests of this nature, "the crimes charged, and the disposition of the cases do not bring them, inherently, even close to the requirement of 'clear, unequivocal, and convincing' evidence that naturalization was illegally procured." The Court, of course, knows that this is not the applicable test where one has deliberately falsified his papers and thus foreclosed further investigation. This basis for the reversal, therefore, misses the point involved and should have been of no consequence here.

The test is not whether the truthful answer in itself, or the facts discovered through an investigation prompted by that answer, would have justified a denial of citizenship. It is whether the falsification, by misleading the examining officer, forestalled an investigation which *might have resulted* in the defeat of petitioner's application for naturalization. The Courts of Appeal are without disagreement on this point [2] and it is, of course,

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breach of the peace appear in the record. Time has served petitioner well, for even the disposition of the cases is not too clear. But to extrapolate the character of petitioner's conduct solely from the meager circumstances smacks of the psychic. Moreover, to say that the offenses "did not involve moral turpitude" is gratuitous. This Court has never so held.

[2] *Corrado* v. *United States*, 227 F. 2d 780 (C. A. 6th Cir.), cert. denied, 351 U. S. 925; *United States* v. *Montalbano*, 236 F. 2d 757 (C. A. 3d Cir.), cert. denied *sub nom. Genovese* v. *United States*, 352 U. S. 952; *United States* v. *Lumantes*, 139 F. Supp. 574 (D. C. N. D. Calif.), aff'd *per curiam*, 232 F. 2d 216 (C. A. 9th Cir.);

a necessary rule in order to prevent the making of misrepresentations for the very purpose of forestalling inquiry as to eligibility. The question as to arrests is highly pertinent to the issue of satisfactory moral character, the *sine qua non* of good citizenship. Petitioner's false answer to the question shut off that line of inquiry and was a fraud on the Government and the naturalization court. The majority makes much of the fact that the arrests occurred prior to the five-year statutory period of good behavior, but that is of no consequence. Concealment at the very time of naturalization is the issue here and that act of deliberate falsification before an officer of the Government clearly relates to the petitioner's general moral character. Indeed, the Congress has long made it a felony punishable by imprisonment for a maximum of five years. Certainly this does not fall within a class of peccadilloes which may be overlooked as being without "reflections on the character of the man seeking citizenship." In fact it strips an offender of all civil rights and leaves a shattered character that only a presidential pardon can mend.

The Court concludes that the false denial of prior arrests was "neutral" because the petitioner revealed in his preliminary application that he was an employee of the International Workers Order, which the Court adds, "is said to be controlled by the Communist Party." What the Court fails to point out is that the sole evidence in this record, as to the International Workers Order was presented in 1955, 15 years after petitioner's deception of the examiner. There is no evidence that the examiner

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Stacher v. *United States*, 258 F. 2d 112 (C. A. 9th Cir.), cert. denied, 358 U. S. 907; *United States* v. *Accardo*, 113 F. Supp. 783 (D. C. D. N. J.), aff'd *per curiam*, 208 F. 2d 632 (C. A. 3d Cir.), cert. denied, 347 U. S. 952. Cf. *United States* v. *Sweet*, 106 F. Supp. 634, 635 (D. C. E. D. Mich.), aff'd *per curiam*, 211 F. 2d 118 (C. A. 6th Cir.), cert. denied, 348 U. S. 817.

knew anything about that organization other than what petitioner had told him. And there is nothing whatever in the record that would have even indicated that I. W. O. was communistic in 1940. What was there to prompt the examiner to investigate it at that time? The truth of the matter is that in his final naturalization application petitioner said he was employed by the "Fraternal Benefit Society of Internation [*sic*] Workers Order", a name which would lead one to believe that it was an insurance society. Surely the Court is not charging the examiner and the naturalization court with the dereliction of admitting petitioner to our citizenship knowing that he was connected with a Communist organization. In fact the testimony at the trial indicates that the Communist Party did not take over the leadership of the International Workers Order until 1941,[3] a year after petitioner was naturalized. It is also well to remember that the Attorney General did not list it as subversive until 1947, although lists of subversive organizations had been issued prior to that date.

As I read the record, it clearly supports the findings of the two courts below. Even if petitioner had told the truth, and the conduct causing the arrests was found not to relate to his present fitness for naturalization it does not follow that citizenship would have been awarded. It might well have been that in checking on the handbills, the harangue in the public park, and the general breach of the peace the investigator would have been led to discover that petitioner was, in 1940, a leader in the Communist Party. I think it more logical than not that the Government would have discovered petitioner's Communist affiliations through such an investigation, and that the

[3] The sole witness on this point testified that "in 1941 . . . a number of us from the Communist Party were sent into that organization by the Communist Party into leadership to give more political content and strength and guidance for that organization."

deliberate falsification in 1940 forestalled this revelation for 15 years. But whether or not that be the case, the Government was entitled to an honest answer from one who sought admission to its citizenship. We should exact the highest standards of probity and fitness from all applicants. American citizenship is a valuable right. It is prized highly by us who have it and it is sought eagerly by millions who do not. It is asking little enough of those who would be vested with its privileges to demand that they tell the truth.

I would affirm.